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Business & Commerce

*Betty Manning*  
Chief Clerk of the House

By *Carroll R. Ralston*

*H* B. No. 263

A BILL TO BE ENTITLED

AN ACT

relating to creation of the Texas strategic fund, business and  
industrial development corporations, and the economic development  
of the state; providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

TITLE I. TEXAS STRATEGIC FUND

CHAPTER 101. GENERAL PROVISIONS

SECTION 101.01. DEFINITIONS. In this title:

(1) "Board" means the board of directors of the Texas  
strategic fund.

(2) "Economic development project" means a project,  
activity, facility, or equipment related to industrial, commercial,  
or agricultural enterprise, including a theme or recreation park,  
agricultural or forestry production, harvesting, storage, or  
processing facilities or equipment, and the use of equipment or  
facilities designed to produce energy from renewable resources.  
The term does not include a portion of an activity, facility, or  
equipment devoted to:

(A) the sale of goods at retail, except in  
relation to fund insurance of a transaction entered into by a  
depository institution, or to a loan by the fund to a minority  
owned business; or

(B) housing.

(3) "Fund" means the Texas strategic fund.

1           (4) "Local governmental entity" means a municipality,  
2 special district, institution of higher education, or a subdivision  
3 or instrumentality of any of those entities.

4           (5) "Person" means an individual, partnership, joint  
5 venture, profit or nonprofit corporation, public or private college  
6 or university, association of persons organized for agricultural,  
7 commercial, or industrial purposes, public utility, or local  
8 industrial development corporation.

9           (6) "Project" means the acquisition, construction,  
10 conversion, or leasing of all or part of an industrial, commercial,  
11 retail, agricultural, or forestry enterprise to carry out the  
12 purposes of this title and of the fund, including acquisition of  
13 land or an interest in land or an improvement to land, including  
14 machinery, equipment, or furnishings. Eligible enterprises include  
15 a research park; office facility; engineering facility; research  
16 and development laboratory; warehousing facility; parts  
17 distribution facility; depot or storage facility; port facility;  
18 railroad facility, including trackage, right-of-way, and  
19 appurtenances; airport; water and air pollution control equipment  
20 or waste disposal facility; theme or recreational park; equipment  
21 or facility designed to produce energy from renewable resources;  
22 farm, ranch, forest, and other agricultural or forestry commodity  
23 producers; agricultural harvesting, storage, transportation, or  
24 processing facility or equipment; grain elevator; shipping head or  
25 livestock pen; livestock; warehouse; wharf or dock facility; water,  
26 electricity, hydroelectric, coal, petroleum, or natural gas  
27 provision facility; dam or irrigation facility; and a sewage,

1 liquid, or solid waste collection, disposal, treatment, or drainage  
2 service or facility.

3 SECTION 101.02. TEXAS STRATEGIC FUND; CREATION, POWERS,  
4 DUTIES; BOARD OF DIRECTORS; DISCLOSURE. (a) The Texas strategic  
5 fund is a public body corporate and politic. The budgeting,  
6 procurement, and related functions of the fund, and administrative  
7 responsibilities for employees of the fund, shall be performed  
8 under the direction and supervision of the department of commerce.

9 (b) The Texas strategic fund is managed by a board of  
10 directors consisting of the chairman of the board of directors of  
11 the department of commerce, the state treasurer, and seven members  
12 with knowledge, skill, and experience in academics, business, or  
13 finance, appointed by the governor with the advice and consent of  
14 the senate. Not more than two appointed members of the board may  
15 be officials or employees of the state. Appointed members shall  
16 include minority, female, and small business representation.

17 (c) The governor shall designate one member of the board to  
18 serve as chairman, one member to serve as president, and one member  
19 to serve as vice-president. These officers serve at the pleasure  
20 of the governor.

21 (d) Appointed members serve two-year terms expiring February  
22 1 of each odd-numbered year.

23 (e) Members of the board serve without compensation for  
24 their membership on the board, except that the president and  
25 vice-president shall receive reasonable compensation as established  
26 by the board, and members of the board shall receive reasonable  
27 reimbursement for necessary travel and expenses.

1           (f) The board may delegate to its president, vice-president,  
2 or others functions and authority as the board considers necessary  
3 or appropriate, including supervision of employees of the fund.

4           (g) A record or portion of a record, material, or other data  
5 received, prepared, used, or retained by the fund or any of its  
6 centers in connection with an application to or with a project or  
7 product assisted by the fund or any of its centers that relates to  
8 financial or proprietary information submitted by an applicant that  
9 is considered by the applicant and acknowledged by the board as  
10 confidential is not subject to disclosure. The board may meet in  
11 closed session to make a determination of whether it acknowledges  
12 as confidential any financial or proprietary information submitted  
13 by the applicant and considered by the applicant as confidential.  
14 Unless considered proprietary information, the board may not  
15 acknowledge routine financial information as confidential. The  
16 fund may not disclose financial or proprietary information not  
17 subject to disclosure under Subsection (f) of this section without  
18 consent of the applicant submitting the information.

19           (h) A document to which the fund is a party evidencing a  
20 loan, insurance, mortgage, lease, venture, or other type of  
21 agreement the fund is authorized to enter into is not financial or  
22 proprietary information that may be exempt from disclosure under  
23 Subsection (g) of this section.

24           (i) In this section, "financial or proprietary information"  
25 means information that has not been publicly disseminated or that  
26 is unavailable from other sources, the release of which might cause  
27 the applicant significant competitive harm.

1           SECTION 101.03. BOARD MEMBERS AND FUND OFFICERS AND  
2 EMPLOYEES; CONTRACTS WITH FUND; DUTIES. A member of the board or  
3 officer, employee, or agent of the fund shall discharge the duties  
4 of the person's position in a nonpartisan manner, with good faith,  
5 and with that degree of diligence, care, and skill that an  
6 ordinarily prudent person would exercise under similar  
7 circumstances in a similar position. In discharging those duties a  
8 member, officer, employee, or agent, if acting in good faith, may  
9 rely on the opinion of counsel for the fund, on the report of an  
10 independent appraiser selected with reasonable care by the board,  
11 or on financial statements of the fund represented to the member,  
12 officer, employee, or agent to be correct by the president or the  
13 officer of the fund having charge of its books or account, or  
14 stated in a written report by a certified public accountant fairly  
15 to reflect the financial condition of the fund.

16           SECTION 101.04. POWERS OF FUND. The fund has the powers  
17 necessary or convenient to carry out the purposes of this title and  
18 the fund, including the power to:

- 19                   (1) sue and be sued;
- 20                   (2) have a seal;
- 21                   (3) have perpetual succession;
- 22                   (4) make, execute, and deliver contracts, conveyances,  
23 and other instruments necessary or convenient to the exercise of  
24 its powers;
- 25                   (5) make and amend bylaws;
- 26                   (6) solicit and accept gifts, grants, loans, and other  
27 aids from any person or the federal, state, or a local government

1 or an agency of the federal, state, or a local government, or to  
2 participate in any other way in a federal, state, or local  
3 government program;

4 (7) make grants, loans, and investments;

5 (8) guarantee and insure loans, leases, bonds, notes,  
6 or other indebtedness, whether public or private;

7 (9) issue letters of credit;

8 (10) construct, acquire by gift, purchase, installment  
9 purchase, or lease, and improve, repair, or equip a project or part  
10 of a project;

11 (11) borrow money and issue bonds to finance part or  
12 all of the project costs of a project, or of a loan pursuant to  
13 Subdivision (24) of this section for an export transaction, and  
14 secure those bonds by mortgage, assignment, or pledge of any of its  
15 money, revenue, income, or property; project costs include costs  
16 of acquiring and installing machinery, equipment, furnishings, and  
17 other personal property, regardless of whether the fund owns or  
18 proposes to own or finance the building or land in or near to which  
19 the machinery, equipment, furnishings, and other personal property  
20 is or will be located;

21 (12) acquire, or contract to acquire from a person,  
22 local governmental entity, federal or state government, or an  
23 agency of one of those entities, a leasehold, real or personal  
24 property or an interest in real or personal property, and own,  
25 hold, clear, improve, rehabilitate, sell, assign, exchange,  
26 transfer, convey, lease, mortgage, dispose of, or encumber that  
27 property as is convenient for the accomplishment of the purposes of

1     this title and the fund;

2                 (13)   acquire insurance against loss in connection with  
3     the fund's property, assets, or activities;

4                 (14)   invest money of the fund at the fund's discretion  
5     in obligations determined proper by the fund, and select and use  
6     depositories for its money;

7                 (15)   employ personnel, private consultants, managers,  
8     counsel, auditors, engineers, and scientists and pay them from  
9     money of the fund legally available for this purpose;

10                (16)   charge, impose, and collect fees and charges in  
11     connection with any transaction and provide for reasonable  
12     penalties for delinquent payment of fees or charges;

13                (17)   indemnify and acquire insurance indemnifying  
14     members of the board from personal loss or accountability from  
15     liability asserted by a person on the bonds of the fund or from any  
16     personal liability or accountability arising from:

17                        (A)   issuance of the bonds, insurance, or  
18     guarantees;

19                        (B)   acquisition, construction, ownership, or  
20     operation of a project; or

21                        (C)   any other action or failure to act by the  
22     fund;

23                (18)   enter into a lease, which may provide for options  
24     to purchase or renew, for the use or sale of a project;

25                (19)   mortgage or create security interests in a  
26     project, part of a project, a lease or loan, or rents, revenues, or  
27     sums to be paid under a project, in favor of the holders of the

1 bonds issued by the fund;

2 (20) convey or release a project or part of a project  
3 to a lessee, purchaser, or borrower under an agreement, after  
4 provision has been made for the retirement in full of the bonds  
5 issued for that project under terms and conditions provided in the  
6 agreement or as agreed with the holders of the bonds, at any time  
7 that the obligation of the lessee, purchaser, or borrower to make  
8 the payments prescribed remains fixed as provided by the agreement  
9 notwithstanding the conveyance or release, or as otherwise agreed  
10 with the holders of the bonds;

11 (21) make loans, participate in the making of loans,  
12 undertake commitments to make loans and mortgages, buy and sell  
13 loans and mortgages at public or private sale, rewrite loans and  
14 mortgages, discharge loans and mortgages, foreclose on a mortgage,  
15 begin an action to protect or enforce a right conferred on the fund  
16 by a law, mortgage, loan, contract, or other agreement, bid for and  
17 purchase property that was the subject of the mortgage at a  
18 foreclosure or other sale, acquire or take possession of the  
19 property and complete, administer, pay the principal of and  
20 interest on obligations incurred in connection with that property,  
21 and dispose of and otherwise deal with the property, in a manner  
22 necessary or desirable to protect the interests of the fund;

23 (22) certify, for the purpose of determining eligible  
24 investments for the basis of a single business tax credit, minority  
25 venture capital companies;

26 (23) create and operate centers, accounts, and funds  
27 as required or permitted by law for the use and disbursement of



1 assets of the fund; and

2 (24) make loans to a financial institution to  
3 facilitate financing of all or part of an export related  
4 transaction, including pre-export working capital financing and  
5 post-export receivable financing.

6 SECTION 101.05. BUSINESS AND INDUSTRY EVALUATION; PRIORITIES  
7 FOR JOB OPPORTUNITY AND ECONOMIC DEVELOPMENT PURPOSES. (a) The  
8 fund shall develop procedures to evaluate types of business and  
9 industry and to set priorities as to the types of business and  
10 industry that are most likely to provide significant opportunities  
11 for jobs and economic development in this state, consistent with  
12 the purposes of this title and the fund. This evaluation must  
13 include the location of the firm and the direct and indirect effect  
14 of assistance on state revenues and expenditures. Priorities must  
15 be based on this evaluation and may give preference to:

16 (1) retention of businesses and industries that would  
17 be likely to leave the state without economic incentives to remain;

18 (2) revitalization and diversification of the economic  
19 base; and

20 (3) generation and retention of the greatest number of  
21 direct and indirect jobs.

22 (b) Based on the findings under Subsection (a) of this  
23 section, the fund shall establish targets by which the operations  
24 and centers of the fund may be guided.

25 SECTION 101.06. REPORTS; AUDITS; MONITORING. (a) The fund  
26 shall submit to the legislature a quarterly status report of its  
27 activities. The report must include information on the name and

1 location of each applicant, amount and type of financial assistance  
2 being requested, type of project or product being financed, number  
3 of net jobs created or retained, duration of financial assistance,  
4 amount of financial support other than state resources, and the  
5 status of any loans of the fund, excluding industrial development  
6 revenue loans, that are in default. The report may not include  
7 information exempt from disclosure under Section 101.02 of this  
8 title.

9 (b) The state auditor annually shall conduct and remit to  
10 the legislature a program and financial audit of the fund. In the  
11 conduct of the audit the state auditor shall have access to all  
12 records of the fund at any time, whether or not confidential. Each  
13 audit required by this section must include a determination of  
14 whether the fund is likely to be able to continue to meet its  
15 obligations, including a report on the status of outstanding loans  
16 and agreements made by the fund.

17 (c) The department of commerce shall monitor the operations  
18 of and may require an audit of an entity that is operated or  
19 financed by the fund. The monitoring and audit shall be sufficient  
20 to allow the entity to comply with federal and state law.

21 SECTION 101.07. CONSTRUCTION OF LIMITATIONS ON POWERS OF  
22 FUND. If the exercise of a power granted to the fund under this  
23 title is expressly limited or restricted under a particular chapter  
24 of this title, the limitation or restriction applies only when the  
25 fund is acting under that chapter.

26 SECTION 101.08. REQUESTS FOR ASSISTANCE FROM FUND;  
27 PROCEDURE. Assistance from the fund for a project may be requested

1 by filing a written application with the board. Within 90 days  
2 after the date of the filing of an application under this section,  
3 the board shall approve or disapprove the request for assistance.  
4 On written request by an applicant, the board may reconsider its  
5 denial of an application for assistance under this section or may  
6 waive the 90-day deadline for approving or disapproving an  
7 application.

8 SECTION 101.09. PRIVATE SECTOR FINANCIAL SUPPORT.

9 Significant private sector financial support must be required in  
10 connection with:

11 (1) a product or an economic development project for  
12 which an applicant is being provided assistance from the fund or  
13 any of its centers;

14 (2) an economic development project in assistance of  
15 which, directly or indirectly, an applicant other than a local  
16 governmental entity will use the financial support of the fund; or

17 (3) loan or lease insurance, a guarantee, or a letter  
18 of credit provided by the fund or any of its centers in relation to  
19 an economic development project.

20 SECTION 101.10. EMPLOYMENT TRANSFERS; CONDITIONS FOR PUBLIC  
21 WORK LOAN, LOAN INSURANCE, OR GUARANTEE. The fund may not provide  
22 a loan, loan insurance, or a guarantee for a public work that  
23 assists a project, or exercise any power in relation to a project,  
24 if completion of the project will cause the transfer of employment  
25 of more than 20 full-time persons from one or more local  
26 governmental entities of the state to the local governmental entity  
27 for which the loan, loan insurance, or guarantee is provided or in

1     which the project is located unless:

2                 (1) the fund provides notice to each local  
3 governmental entity from which employment is to be transferred; and

4                 (2) if any notified local governmental entity objects  
5 within 30 days after the date of the notice to the transfer of the  
6 employment, the board votes by a majority vote of its members to  
7 enter the transaction notwithstanding the employment transfer and  
8 the objections to the transfer.

9                 SECTION 101.11. LIMITATIONS ON TOTAL OBLIGATIONS TO FUND;  
10 OBLIGATION DEFINED. The total obligations to the fund, excluding  
11 rights and royalties under a venture capital agreement, in relation  
12 to a single project may not at any time exceed five percent of the  
13 total assets of the fund, except that on approval by a two-thirds  
14 vote of the board this limit may be increased to 10 percent of the  
15 assets of the fund. For the purposes of loan insurance, a  
16 guarantee, or a letter of credit, the obligation is considered the  
17 reserves as established by the fund.

18                SECTION 101.12. ECONOMIC DEVELOPMENT FUND. (a) The  
19 economic development fund is a fund in the state treasury.

20                (b) The fund shall pay into the economic development fund  
21 any money appropriated or otherwise provided by this state for the  
22 economic development fund and any other money made available to the  
23 fund for the economic development fund from any other source,  
24 public or private.

25                (c) Money in the economic development fund shall be used for  
26 the purposes and objectives of the fund, this title, and other Acts  
27 related to the fund, and shall be expended in the following order

1 of priority:

2 (1) to pay the principal of and interest on bonds  
3 issued by the fund, as provided by authorizing resolution pledging  
4 the funds for payment of the bonds;

5 (2) to pay the costs of administration of the fund  
6 including the cost of administration of the economic development  
7 fund; and

8 (3) to make a transfer to any of the accounts or funds  
9 created or operated by the fund in amounts and at times the fund by  
10 resolution determines.

11 SECTION 101.13. POWER OF FUND TO BORROW MONEY AND ISSUE  
12 BONDS OR NOTES. (a) The fund may borrow money and issue bonds to  
13 make expenditures necessary or convenient to carrying out the  
14 fund's purposes, including expenditures to:

15 (1) provide sufficient funds for achieving the fund's  
16 purposes and objectives, including amounts necessary to pay the  
17 costs of acquiring all or part of a project;

18 (2) make loans for the costs of all or part of a  
19 project;

20 (3) make loans under Section 101.04(24) of this title  
21 for an export related transaction;

22 (4) make grants;

23 (5) provide money to guarantee or insure a loan,  
24 lease, bond, or other indebtedness;

25 (6) make working capital loans;

26 (7) pay administrative costs;

27 (8) pay the costs of issuance of bonds under this

1 title;

2 (9) pay interest on bonds becoming payable before the  
3 receipt of the first revenues available for payment as determined  
4 by the board; and

5 (10) establish, in full or in part, a reserve for the  
6 payment of the principal of and interest on the bonds in the amount  
7 determined by the board.

8 (b) The bonds, including commercial paper, shall be  
9 authorized by resolution adopted by the board, shall bear the date  
10 or dates, and shall mature at the time or times not exceeding 50  
11 years from the date of issuance, that the resolution provides. The  
12 bonds shall bear interest at the rate or rates provided by the  
13 resolution. The bonds shall be in the denominations, be in the  
14 form, either coupon or registered, carry the registration  
15 privileges, be transferable, be executed in the manner, be payable  
16 in the medium of payment and at the place or places, and be subject  
17 to the terms of prior redemption at the option of the fund or the  
18 holders that the resolution provides. The bonds of the fund may be  
19 sold at public or private sale, at the price or prices that the  
20 fund determines. Bonds may be sold at a discount.

21 (c) Bonds may be:

22 (1) made the subject of a put or agreement to  
23 repurchase by the fund or others;

24 (2) secured by a letter of credit or other collateral  
25 that the resolution authorizes; or

26 (3) reissued by the fund once reacquired by the fund  
27 pursuant to a put or repurchase agreement.

1           (d) The fund may by order authorize its president or other  
2 officer to:

3               (1) sell, deliver, and receive payment for bonds;

4               (2) refund bonds by the delivery of new bonds whether  
5 or not the bonds to be refunded have matured, are subject to prior  
6 redemption, or are to be paid, redeemed, or surrendered at the time  
7 of the issuance of refunding bonds;

8               (3) deliver bonds, to refund bonds and for any other  
9 authorized purposes;

10              (4) buy bonds at not more than their face value; or

11              (5) approve interest rates or methods for fixing  
12 interest rates, prices, discounts, maturities, principal amounts,  
13 denominations, dates of issuance, interest payment dates,  
14 redemption rights at the option of the fund or the holder, the  
15 place of delivery and payment, and other matters and procedures  
16 necessary to complete the transactions authorized.

17           (e) Except as otherwise expressly provided by the fund,  
18 every issue of its bonds is a general obligation of the fund  
19 payable out of revenues, properties, or money of the fund, subject  
20 only to agreements with the holders of particular bonds pledging  
21 particular receipts, revenues, properties, or money as security.

22           (f) The bonds of the fund are negotiable instruments.

23           (g) The bonds are not required to be registered.

24           (h) A resolution authorizing bonds may provide for one or  
25 more of the following as a part of the contract with the holders:

26               (1) a pledge of all or a part of the fees, charges,  
27 and revenues made or received by the fund, all or a part of the

1 money received in payment of lease rentals, loans, and interest,  
2 and other money received or to be received to secure the payment of  
3 the bonds or of an issue of bonds, subject to agreements with  
4 bondholders;

5 (2) a pledge of all or a part of the assets of the  
6 fund, subject to agreements with bondholders;

7 (3) a pledge of a loan, grant, or contribution from  
8 any source;

9 (4) the use and disposition of the revenues and income  
10 from leases, or from loans, notes, and mortgages owned by the fund;

11 (5) the establishment and setting aside of reserves or  
12 sinking funds and their regulation and disposition subject to this  
13 title;

14 (6) limitations on the purpose to which the proceeds  
15 of sale of the bonds may be applied and limitations on pledging  
16 those proceeds to secure the payment of other bonds;

17 (7) authority for and limitations on the issuance of  
18 additional bonds for the purposes provided for in the resolution  
19 and the terms on which additional bonds may be issued and secured;

20 (8) the procedure, if any, by which the terms of a  
21 contract with bondholders may be amended or abrogated, the number  
22 of bondholders who are required to consent, and the manner in which  
23 the consent may be given;

24 (9) vesting in a trustee located within or outside the  
25 state, or a secured party, property, income, revenues, receipts,  
26 rights, remedies, powers, and duties in trust or otherwise as the  
27 fund determines necessary or appropriate to adequately secure and



1 protect bondholders or to limit or abrogate the rights of the  
2 bondholders;

3 (10) payment of maintenance and repair costs of a  
4 project;

5 (11) the insurance to be carried on a project and the  
6 use and disposition of insurance money and condemnation awards;

7 (12) the terms, conditions, and agreements on which  
8 the holder of the bonds is entitled to the appointment of a  
9 receiver, which must include a provision allowing the receiver to  
10 enter and take possession of the project and maintain it or lease  
11 or sell the project for cash or on an installment sales contract,  
12 to prescribe rentals and payments, and to collect, receive, and  
13 apply all income and revenues arising in the same manner and to the  
14 same extent as the fund; and

15 (13) any other matters that affect the security or  
16 protection of the bonds.

17 (i) A pledge made by the fund is valid and binding from the  
18 time the pledge is made. The money or property pledged and later  
19 received by the fund is immediately subject to the lien of the  
20 pledge without a physical delivery or further act. The lien of the  
21 pledge is valid and binding against parties having claims of any  
22 kind in tort, contract, or otherwise against the fund and against  
23 the transfer of the money or property so pledged, regardless of  
24 whether the parties have notice. Neither the resolution, the trust  
25 agreement, nor any other instrument by which a pledge is created  
26 need be recorded.

27 (j) Neither the members of the board nor any person

1     executing the bonds is liable personally on the bonds or subject to  
2     personal liability or accountability by reason of their issuance.

3             (k) The state is not liable on bonds of the fund nor shall  
4     the bonds be considered a debt of the state. The bonds must  
5     contain on their face a statement indicating this fact.

6             (l) The notes and bonds of the fund are securities in which  
7     the public officers and bodies of this state, local governmental  
8     entities, insurance companies, associations, banks, trust  
9     companies, savings banks, savings and loan associations, and  
10    investment companies, and administrators, guardians, executors,  
11    trustees, other fiduciaries, and all other persons authorized to  
12    invest in bonds or other obligations of the state may properly and  
13    legally invest funds.

14            (m) The property of the fund and its income and operation  
15    are exempt from all taxation by this state or any of its political  
16    subdivisions and all bonds of the fund, the interest on the bonds,  
17    and their transfer are exempt from all taxation by this state or  
18    any of its political subdivisions, except for inheritance taxes.

19            SECTION 101.14. CONTRACTS FOR SERVICES NECESSARY FOR  
20    MANAGEMENT AND OPERATION OF FUND. The fund, in its discretion, may  
21    contract with others, public or private, for the provision of all  
22    or a portion of the services necessary for the management and  
23    operation of the fund.

24            SECTION 101.15. EQUAL OPPORTUNITY CRITERIA; TRANSACTIONS  
25    WITH FUND. The fund shall establish criteria to assure equal  
26    opportunity to women, minorities, and small businesses. In  
27    deciding whether to enter into a transaction, the fund shall

1 consider whether the project:

- 2 (1) is economically sound;
- 3 (2) can be successfully completed;
- 4 (3) is located or will locate in this state; and
- 5 (4) can be partially financed through ordinary means
- 6 at reasonable terms.

7 SECTION 101.16. SUPPORT TO FUND BY DEPARTMENT OF COMMERCE;  
8 COOPERATION WITH FUND BY OTHER STATE DEPARTMENTS AND AGENCIES. (a)  
9 If requested by the fund, the department of commerce shall provide  
10 staff and other support to the fund sufficient to carry out its  
11 duties, powers, and responsibilities.

12 (b) All departments and agencies of state government shall  
13 provide full cooperation to the fund in the performance of its  
14 duties, powers, and responsibilities.

15 CHAPTER 102. CENTER FOR ASSISTANCE TO PRIVATE ENTERPRISE

16 SECTION 102.01. ESTABLISHMENT AND OPERATION OF CENTER. The  
17 fund shall establish and operate a center for assistance to private  
18 enterprise.

19 SECTION 102.02. FUNDING OF CENTER BY PRIVATE ENTERPRISE  
20 ASSISTANCE ACCOUNT; SOURCE OF FUNDS FOR ACCOUNT; TRANSFERS OF  
21 MONEY. (a) The center for assistance to private enterprise shall  
22 be funded by an account established and managed by the fund, to be  
23 known as the private enterprise assistance account.

24 (b) The fund shall pay into the account money:

25 (1) appropriated or otherwise provided by this state  
26 for the purposes of the center;

27 (2) determined by the fund to be paid into the account

1 from the economic development fund;

2 (3) that the fund receives in payment of loans made  
3 through the center for assistance to private enterprise; or

4 (4) otherwise made available to the fund for the  
5 purposes of the center from any other source, public or private.

6 (c) Money in the private enterprise assistance account may  
7 be transferred into any other account established by the fund,  
8 unless the fund is otherwise obligated to retain the money in the  
9 private enterprise assistance account or the money was appropriated  
10 by this state for the purposes of the center.

11 SECTION 102.03. LOANS FROM MONEY IN PRIVATE ENTERPRISE  
12 ASSISTANCE ACCOUNT. Subject to the limitations provided by this  
13 chapter, the fund may use the money in the private enterprise  
14 assistance account to make loans to private enterprise to finance  
15 economic development projects within this state that have the  
16 potential of creating new jobs or retaining current jobs within  
17 this state.

18 SECTION 102.04. LOANS OR INVESTMENTS. (a) Subject to the  
19 limitations provided by this chapter, the fund may use the money  
20 held in the private enterprise assistance account to make loans to:

21 (1) a certified development company under Sections  
22 501-503 of the Small Business Investment Act of 1958, 15 U.S.C.  
23 Sections 695-697;

24 (2) a small business lending company under the Small  
25 Business Act, 15 U.S.C. Sections 631, 632-634, 636, 637-639, and  
26 640-649;

27 (3) a minority enterprise small business investment

1 corporation or equivalent venture capital corporation; or

2 (4) a similar entity that may leverage its capital  
3 under a federal program.

4 (b) Loans made under this section shall be made on the  
5 condition that the recipient of the loan will use the money to  
6 assist economic development projects within this state that have  
7 the potential for creating new jobs or retaining current jobs  
8 within this state.

9 SECTION 102.05. PURPOSES AND TERMS OF LOANS; QUALIFIED  
10 RECIPIENTS. (a) Loans made from the private enterprise assistance  
11 account may be used for any purpose consistent with the purposes  
12 and objectives of the fund and this chapter, including:

13 (1) the acquisition, improvement, or rehabilitation of  
14 land and buildings;

15 (2) the acquisition of machinery, equipment, or  
16 services;

17 (3) working capital; or

18 (4) any other purpose reasonably related to an  
19 economic development project.

20 (b) Loans made from the private enterprise assistance  
21 account may be made to any person or entity, public or private,  
22 organized for profit or not for profit, consistent with the  
23 provisions of Sections 102.03 and 102.04 of this title and other  
24 applicable law.

25 (c) Loans from the private enterprise assistance account may  
26 be made on terms and conditions that the fund determines to be  
27 reasonable, appropriate, and consistent with the purposes and

1 objectives of the fund and this title.

2 SECTION 102.06. PRIVATE SECTOR FINANCIAL SUPPORT; USE OF  
3 MONEY BORROWED. (a) A loan may not be made from the private  
4 enterprise assistance account for an economic development project  
5 under Section 102.03 of this title unless significant private  
6 sector financial support is associated with the economic  
7 development project.

8 (b) A loan may not be made from the private enterprise  
9 assistance account under Section 102.04 of this title unless the  
10 fund is legally assured that the money will be used to assist  
11 economic development projects that have significant private sector  
12 financial support.

13 SECTION 102.07. JOB CREATION OR RETENTION. The fund shall  
14 give first priority in making loans from the private enterprise  
15 assistance account to economic development projects that have the  
16 greatest potential for creating new jobs or retaining current jobs  
17 within this state.

18 CHAPTER 103. CENTER FOR ASSISTANCE TO LOCAL GOVERNMENT

19 SECTION 103.01 PUBLIC WORK DEFINED. As used in this  
20 chapter, "public work" includes:

21 (1) the acquisition, construction, or improvement of a  
22 public work;

23 (2) the acquisition of easements necessary for the  
24 public work;

25 (3) the acquisition of real and personal property and  
26 interests in real and personal property necessary for the public  
27 work; and

1           (4) the demolition of structures, site preparation,  
2 relocation costs, and building rehabilitation and administrative  
3 costs, including the cost of technical and economic feasibility  
4 studies or architectural, engineering, legal, and accounting fees,  
5 necessary for the public work.

6           SECTION 103.02. ESTABLISHMENT AND OPERATION OF CENTER. The  
7 fund shall establish and operate a center for assistance to local  
8 government.

9           Section 103.03. ESTABLISHMENT, FUNDING, AND MANAGEMENT OF  
10 CENTER; LOCAL GOVERNMENT ASSISTANCE ACCOUNT. (a) The center for  
11 assistance to local government shall be funded by an account  
12 established and managed by the fund, to be known as the local  
13 government assistance account.

14           (b) The fund shall pay into the account money:

15               (1) appropriated or otherwise provided by this state  
16 for the purposes of the center;

17               (2) determined by the fund to be paid into the  
18 account from the economic development fund;

19               (3) that the fund receives in payment of loans made  
20 through the center for assistance to local government; or

21               (4) otherwise made available to the fund for the  
22 purposes of the center from any other source, public or private.

23           (c) Money in the local government assistance account may be  
24 transferred into any other account established by the fund, unless  
25 the fund is otherwise obligated to retain the money in the local  
26 government assistance account or the money was appropriated by this  
27 state for the purposes of the center.

1           SECTION 103.04. AUTHORIZED USE OF MONEY IN LOCAL GOVERNMENT  
2 ASSISTANCE ACCOUNT. Subject to the limitations provided by this  
3 chapter, the fund may use money in the local government assistance  
4 account to:

- 5           (1) make loans to a local governmental entity; or  
6           (2) establish a reserve fund to insure or guarantee  
7 borrowings of a local governmental entity.

8           SECTION 103.05. REQUIRED PURPOSES FOR LOANS, LOAN INSURANCE,  
9 OR GUARANTEES INVOLVING LOCAL GOVERNMENT ASSISTANCE ACCOUNT.  
10 Loans, loan insurance, or guarantees provided under Section 103.04  
11 of this title shall be made only for a public work that will assist  
12 an economic development project, including those portions of an  
13 endeavor devoted to the sale of goods at retail or housing if these  
14 portions are inseparable from the economic development project and  
15 the public work also assists those portions of the endeavor  
16 qualified as an economic development project, that has the  
17 potential of creating new jobs or retaining current jobs within  
18 this state and that is consistent with the purposes and objectives  
19 of the fund.

20           SECTION 103.06. LOANS OR LOAN INSURANCE OR GUARANTEES FOR  
21 PUBLIC WORKS; PUBLIC WORKS AS PUBLIC IMPROVEMENTS; APPLICATIONS.

22           (a) A loan, loan insurance, or a loan guarantee shall be provided  
23 under Section 103.04 of this title only for a public work.

24           (b) A public work financed in whole or in part under Section  
25 103.04 of this title must be a public improvement that the local  
26 governmental entity is empowered to provide for the public under  
27 law or its charter. However, a public work may not include a



1 public system of mass transportation that involves solely the  
2 transportation of individuals.

3 (c) A local governmental entity shall apply for a loan, loan  
4 insurance, or a loan guarantee under Section 103.04 of this title  
5 in conjunction with an application the economic development project  
6 may make to the fund or with an affidavit of the economic  
7 development project attesting to the manner in which the public  
8 work will assist the economic development project.

9 SECTION 103.07. AUTHORITY TO BORROW OR CONTRACT FOR LOAN  
10 INSURANCE AND GUARANTEES FROM FUND; DEBT LIMITATIONS; APPROVAL FOR  
11 BORROWING OR CONTRACTING. A local governmental entity may borrow  
12 or contract for loan insurance and loan guarantees from the fund  
13 under this title, notwithstanding any charter provision or other  
14 provision of law to the contrary. An amount borrowed by a local  
15 governmental entity under this title may not be included in, or  
16 charged against, a statutory or charter debt limitation of the  
17 local governmental entity. A local governmental entity is not  
18 required to seek or obtain the approval of the voters to borrow  
19 money under this title.

20 SECTION 103.08. TERMS OF LOANS AND LOAN INSURANCE OR  
21 GUARANTEES. Loans, loan insurance, or loan guarantees provided  
22 from the local government assistance account may be on terms and  
23 conditions that the fund determines to be reasonable, appropriate,  
24 and consistent with the purposes and objectives of the fund and  
25 this chapter.

26 SECTION 103.09. PRIVATE SECTOR FINANCIAL SUPPORT AS  
27 PREREQUISITE TO LOAN, LOAN INSURANCE, OR GUARANTEE. A loan, loan

1 insurance, or a loan guarantee may not be provided from the local  
2 government assistance account unless it is for a public work that  
3 will assist an economic development project and the fund finds that  
4 there is significant private sector financial support associated  
5 with the economic development project.

6 SECTION 103.10. PRIORITIES IN PROVIDING LOANS, LOAN  
7 INSURANCE, AND GUARANTEES. The fund shall give first priority in  
8 providing loans, loan insurance, and loan guarantees from the local  
9 government assistance account to local governmental entities whose  
10 past borrowing practices show the ability and commitment to make  
11 timely payment of principal of and interest on its obligations and  
12 for public works that assist economic development projects that  
13 have the greatest potential for creating new jobs or retaining  
14 current jobs within this state.

15 CHAPTER 104. CENTER FOR LOAN INSURANCE

16 SECTION 104.01. ESTABLISHMENT AND OPERATION OF CENTER. The  
17 fund shall establish and operate a center for loan insurance.

18 SECTION 104.02. FUNDING OF CENTER BY LOAN INSURANCE ACCOUNT;  
19 ESTABLISHMENT, FINANCING, AND MANAGEMENT OF ACCOUNT. (a) The  
20 center for loan insurance shall be funded by an account established  
21 and managed by the fund, to be known as the loan insurance account.

22 (b) The fund shall pay into the account money:

23 (1) appropriated or otherwise provided by this state  
24 for the purposes of the center;

25 (2) determined by the fund to be paid into the account  
26 from the economic development fund;

27 (3) that the fund receives as fees or premiums for its

1 provision of loan, lease, or debenture insurance; loan, lease, or  
2 debenture guarantees; or letters of credit; or

3 (4) otherwise made available to the fund for the  
4 purposes of the center from any other source, public or private.

5 (c) Money in the loan insurance account may be transferred  
6 into any other account established by the fund, unless the fund is  
7 otherwise obligated to retain the money in the loan insurance  
8 account or the money was appropriated by this state for the  
9 purposes of the center.

10 SECTION 104.03. LETTERS OF CREDIT, INSURING, GUARANTEEING,  
11 OR ISSUING. The fund, through the center for loan insurance, may:

12 (1) insure, guarantee, or issue letters of credit for  
13 all or a part of a loan or debenture of others, public or private;

14 (2) insure, guarantee, or issue letters of credit for  
15 all or a part of a lease entered into by others, public or private;

16 (3) procure insurance, a guarantee, or a letter of  
17 credit from any source for all or a part of a single loan,  
18 debenture, or lease or for any combination of loans, debentures, or  
19 leases of others, public or private;

20 (4) insure, guarantee, or issue letters of credit for  
21 all or a part of a revenue bond issued by the fund, another entity  
22 of the state, or another entity or authority authorized by law to  
23 issue revenue bonds; and

24 (5) procure insurance, a guarantee, or a letter of  
25 credit for all or a part of a single revenue bond issue or for all  
26 or a part of any combination of revenue bond issues of the fund,  
27 another entity of the state, or another entity or authority

1 authorized by law to issue revenue bonds.

2 SECTION 104.04. CONTRACT OF INSURANCE TO PROVIDE LOAN  
3 INSURANCE. To provide loan insurance under Section 104.03 of this  
4 title, the fund may enter into a contract of insurance.

5 SECTION 104.05. PURPOSES AND PRIORITIES REQUIRED IN THE  
6 GRANTING OF INSURANCE, LOAN GUARANTEES, OR LETTERS OF CREDIT. (a)  
7 Insurance, guarantees, or letters of credit provided or procured  
8 under Section 104.03 of this title may be provided or procured only  
9 for economic development projects within this state that otherwise  
10 are consistent with the purposes and objectives of the fund and  
11 this chapter, including the requirements of Section 101.09 of this  
12 title.

13 (b) The fund shall give first priority in providing or  
14 procuring insurance, guarantees, and letters of credit to economic  
15 development projects that have the greatest potential for creating  
16 new jobs or retaining current jobs within this state.

17 SECTION 104.06. CONDITIONS FOR GRANTING OF INSURANCE, LOAN  
18 GUARANTEES OR LETTERS OF CREDIT; LOAN, DEBENTURE, LEASE INSURANCE,  
19 GUARANTEE, OR LETTER OF CREDIT FEES. (a) Insurance, guarantees,  
20 or letters of credit may not be provided or procured under Section  
21 104.03 of this title unless the fund is legally assured that the  
22 loans, debentures, or leases insured, guaranteed, or for which  
23 letters of credit are issued will be used to assist economic  
24 development projects that have significant private sector financial  
25 support.

26 (b) Insurance, guarantees, or letters of credit may be  
27 provided or procured on terms and conditions that the fund

1 determines to be reasonable, appropriate, and consistent with the  
2 purposes and objectives of the fund and this title.

3 (c) The fund may charge the lender, borrower, or both, a fee  
4 or premium for loan, debenture, or lease insurance, a guarantee, or  
5 a letter of credit. Guidelines for premiums or fees charged by the  
6 fund for loan, debenture, or lease insurance, guarantees, or  
7 letters of credit shall be established by the fund.

8 SECTION 104.07. CENTER FOR LOAN INSURANCE PARTICIPATION  
9 AGREEMENTS; AUTHORIZATION; CONTENTS. The fund may enter into  
10 agreements with lenders for participation in the center for loan  
11 insurance. The agreements may include:

12 (1) authorization for the lender to determine,  
13 collect, and transmit to the fund a fee or premium charge within a  
14 specified range established consistent with the purposes and  
15 objectives of the fund;

16 (2) specification of whether the premium charge shall  
17 be paid by the lender, the borrower, the fund, or by a combination  
18 of those entities in specified proportions;

19 (3) the procedure by which a lender may make a claim  
20 on the fund on default by the borrower, and the conditions under  
21 which a claim may be made; or

22 (4) the maximum amount of claims a lender may make on  
23 the fund, which may be equal to, greater than, or less than the  
24 proportion of the total premiums collected by the fund that is  
25 accounted for by premiums collected by the lender.

26 SECTION 104.08. ESTABLISHMENT OF SPECIAL FUNDS TO SECURE  
27 LOAN INSURANCE OBLIGATIONS; SOURCE OF FUNDS. The fund may

1 establish a special fund or funds solely to secure all or a part of  
2 its obligations within the center for loan insurance into which  
3 fees or premiums collected by the fund for loan, debenture, or  
4 lease insurance, guarantees, or letters of credit may be deposited.

5 CHAPTER 105. CENTER FOR MINORITY VENTURE CAPITAL

6 SECTION 105.01. DEFINITIONS. As used in this chapter:

7 (1) "MESBIC" means a small business investment company  
8 licensed under Section 301(d), Small Business Investment Act of  
9 1958 (15 U.S.C. Section 681(d)).

10 (2) "Minority owned business" means a business that is  
11 at least 50 percent owned, controlled, and managed by persons who  
12 are black, Hispanic, Oriental, Eskimo, or American Indian.

13 (3) "Minority venture capital company" means a  
14 business that makes investments solely in minority owned  
15 businesses.

16 (4) "Venture capital investment" means an investment  
17 in:

18 (A) common or preferred stock and equity  
19 securities without a repurchase requirement for at least five  
20 years;

21 (B) a right to purchase stock or equity  
22 securities;

23 (C) a debenture or loan, whether or not  
24 convertible or having stock purchase rights, together with security  
25 interests against the assets of the borrower, that:

26 (i) by its terms is subordinated to all  
27 borrowings of the borrower from other institutional lenders;

1 (ii) is for a term of not less than three  
2 years; and

3 (iii) has no part amortized during the  
4 first three years; or

5 (D) a general or limited partnership interest.

6 SECTION 105.02. ESTABLISHMENT AND OPERATION OF CENTER. The  
7 fund shall establish and operate a center for minority venture  
8 capital.

9 SECTION 105.03. CERTIFICATION OF MINORITY VENTURE CAPITAL  
10 COMPANIES AND SMALL BUSINESS INVESTMENT COMPANIES; QUALIFICATIONS,  
11 EFFECT, DISCLAIMERS, USE. (a) The fund may certify a minority  
12 venture capital company and a MESBIC. The certification does not  
13 impose liability on this state or authorize the giving or lending  
14 of the credit of this state to a business enterprise. Each  
15 document produced by the department of commerce, the fund, or  
16 business enterprises in conjunction with this program must include  
17 a statement reflecting the limited purpose of the certification and  
18 disclaiming the involvement of this state.

19 (b) A certification application by a minority venture  
20 capital company or a MESBIC shall be forwarded to the fund. To  
21 qualify for initial certification and to retain certification, a  
22 minority venture capital company or a MESBIC must comply with the  
23 following applicable requirements:

24 (1) qualify as a minority venture capital company or  
25 MESBIC as defined by Section 105.01 of this title;

26 (2) if a minority venture capital company, have raised  
27 or have commitments for at least \$1 million to capitalize the

1 minority venture capital company, excluding amounts that the  
2 minority venture capital company is or may be obligated to repay;

3 (3) demonstrate that the professional staff that will  
4 manage the minority venture capital company or MESBIC possesses  
5 relevant experience in the administration and operation of a  
6 venture capital company;

7 (4) have invested at time of application or, if the  
8 minority venture capital company or MESBIC has not yet made  
9 investments, agree to invest and to retain an investment of its  
10 entire portfolio in businesses operating within this state;

11 (5) have invested at time of application or, if the  
12 minority venture capital company or MESBIC has not yet made  
13 investments or has not yet reached the applicable year of  
14 operation, agree to invest and to retain an investment of 50  
15 percent of its paid-in capital by the end of the third year of  
16 operation and 70 percent of its paid-in capital by the end of the  
17 fifth year of operation;

18 (6) agree to comply with this title and its investment  
19 plan and management plan submitted under Subdivision (7) of this  
20 subsection;

21 (7) submit information the fund considers necessary in  
22 conjunction with the application, including:

23 (A) a detailed investment plan describing the  
24 current and proposed activities of the minority venture capital  
25 company or MESBIC;

26 (B) a management plan, including a description  
27 of the business experience and reputation of the professional staff



1 that have been or are to be assembled, and a description of the  
2 current and proposed management structures; and

3 (C) a listing of the present or committed  
4 investors in the minority venture capital company or MESBIC and  
5 background information on the investors; and

6 (8) if a minority venture capital company, agree to  
7 disclose to the fund and to allow the fund to approve or disapprove  
8 a contract entered into between the minority venture capital  
9 company and a minority owned business of which an officer or  
10 director of the minority venture capital company owns 10 percent or  
11 more.

12 SECTION 105.04. CONSIDERATIONS PRIOR TO CERTIFICATION. The  
13 fund shall also consider, before certifying a minority venture  
14 capital company or a MESBIC:

15 (1) the current and proposed composition of the board  
16 of directors of the minority venture capital company or MESBIC and  
17 the relevant experience of the members of the board;

18 (2) whether the minority venture capital company or  
19 MESBIC has a reasonable likelihood of remaining financially sound  
20 and capable of earning for its investors a reasonable rate of  
21 return;

22 (3) the current availability of minority venture  
23 capital in the geographic area in which the minority venture  
24 capital company or MESBIC will conduct business and the current  
25 availability of minority venture capital in the area for products  
26 or processes similar to those funded or to be funded by the  
27 minority venture capital company or MESBIC; and

1           (4) the percentage of the minority venture capital  
2 company or MESBIC owned by members of minorities.

3           SECTION 105.05. VENTURE CAPITAL INVESTMENT REQUIREMENTS;  
4 INVESTMENT DEFINED. (a) At least 65 percent of investments of a  
5 certified minority venture capital company must be venture capital  
6 investments.

7           (b) A certified MESBIC shall attempt to meet the investment  
8 requirements imposed by Subsection (a) of this section on certified  
9 minority venture capital companies.

10          (c) For purposes of this section, Section 105.01(3), and  
11 Sections 105.03(b)(4), (5), and (7)(a) of this title, "investment"  
12 means financial assistance provided by a MESBIC or minority venture  
13 capital company through loans, guarantees, venture capital  
14 investments, or commitments.

15          SECTION 105.06. CERTIFICATION; MINORITY VENTURE CAPITAL  
16 COMPANY BECOMING A SMALL BUSINESS INVESTMENT COMPANY. A minority  
17 venture capital company certified under this chapter that becomes a  
18 MESBIC is considered a certified MESBIC under this chapter without  
19 separate application.

20          SECTION 105.07. INDEPENDENT PROGRAM AUDITS; VISITATION AND  
21 EXAMINATION. A certified minority venture capital company and a  
22 certified MESBIC annually shall have an independent program audit  
23 performed by a certified public accountant. The fund may visit and  
24 examine a certified minority venture capital company or a certified  
25 MESBIC.

26          SECTION 105.08. NONCOMPLIANCE WITH THIS CHAPTER OR  
27 SUBSTANTIAL DEVIATION FROM MANAGEMENT OR INVESTMENT PLAN. If the

1 fund finds that a certified minority venture capital company or a  
2 certified MESBIC has failed to comply with this chapter or has  
3 substantially deviated from the management plan or investment plan  
4 submitted in connection with its certification, the fund shall  
5 notify the board of directors and officers of the minority venture  
6 capital company or MESBIC that the certification will be revoked  
7 120 days after the date of mailing of the notice. The minority  
8 venture capital company or MESBIC may notify the fund before the  
9 expiration of the 120-day period of all efforts taken to remedy the  
10 deficiencies and to comply with the requirements of this chapter.  
11 If the fund determines that the compliance has not been achieved,  
12 the certification is revoked on the date established by the fund.

13 CHAPTER 106. CENTER FOR RESEARCH AND DEVELOPMENT

14 SECTION 106.01. DEFINITION. In this chapter "research and  
15 development enterprise" means a person found by the fund to be  
16 engaged in a business that has as its principal function the  
17 discovery of new substances and the refinement of known substances,  
18 processes, products, theories, and ideas, except for a person whose  
19 business is directed primarily to the accumulation or analysis of  
20 commercial, financial, or mercantile data.

21 SECTION 106.02. ESTABLISHMENT AND OPERATION OF CENTER. The  
22 fund shall establish and operate a center for research and  
23 development.

24 SECTION 106.03. RESEARCH CENTER FUND. (a) The research  
25 center fund is a fund in the state treasury. The center for  
26 research and development shall be funded by the research center  
27 fund.

1 (b) The fund shall pay into the research center fund money:

2 (1) appropriated or otherwise provided by this state  
3 for the purposes of the center for research and development;

4 (2) determined by the fund to be paid into the  
5 research center fund from the economic development fund;

6 (3) that the fund receives in return for investments  
7 made through the center for research and development; or

8 (4) otherwise made available to the fund for the  
9 purposes of the center from any other source, public or private.

10 (c) Money in the research center fund may be transferred  
11 into any other account or fund established or operated by the fund,  
12 unless the fund is otherwise obligated to retain the money in the  
13 research center fund or the money was appropriated by this state  
14 for the purposes of the center.

15 SECTION 106.04. FINANCIAL AID TO NONPROFIT RESEARCH AND  
16 DEVELOPMENT ENTERPRISES; AUTHORIZATION, QUALIFICATION, JOB GROWTH;  
17 FINANCIAL AID PURPOSES AND CONDITIONS. (a) The fund may use the  
18 money in the research center fund to provide financial aid to  
19 nonprofit research and development enterprises that are or will be  
20 established to perform research and development in, or to apply,  
21 present and emerging technology that serves as a foundation for  
22 future job growth or retention in this state, encourages economic  
23 stability or diversification in this state, and establishes this  
24 state as a center of excellence in high technology.

25 (b) Financial aid under this title may be provided for the  
26 purposes of designing and constructing new facilities, designing  
27 and rehabilitating existing facilities, acquiring any interest in

1 real or personal property, and providing initial working capital  
2 including salaries, rent, supplies, inventory, accounts receivable,  
3 mortgage payments, legal costs, utility costs, telephone, travel,  
4 and other incidental costs normally classified as working capital  
5 according to standard accounting principles. Working capital  
6 grants provided by the fund to a particular research and  
7 development enterprise may not extend for a period exceeding 10  
8 years computed from the effective date of the first grant to the  
9 expiration date of the last grant.

10 (c) Financial aid provided by the fund may be on terms and  
11 conditions the fund determines to be reasonable, appropriate, and  
12 consistent with the purposes and objectives of the fund and this  
13 title.

14 (d) The minimum financial aid grant under this title is \$2.5  
15 million to be paid over the period the fund specifies in the grant,  
16 unless this restriction is waived by a two-thirds vote of the  
17 members of the board.

18 SECTION 106.05. BUSINESS PLAN. In providing financial aid  
19 under this chapter, the fund shall require the preparation of a  
20 business plan following guidelines previously adopted by the fund  
21 and shall consider the amount of other capital funding and income  
22 sources available to assure the continued operation of the  
23 nonprofit research and development enterprise.

24 SECTION 106.06. ADVISORY COMMITTEE; HIGHER EDUCATION  
25 COORDINATION COUNCIL. (a) The fund shall appoint:

26 (1) an advisory committee composed of individuals  
27 representing various geographic areas of this state and having the

1 necessary academic or professional credentials or capacity to  
2 assist in determining the selection of present and emerging  
3 technology under Section 106.04 of this title and for the purposes  
4 of evaluating applicants for financial aid under this chapter; and

5 (2) a higher education coordination council containing  
6 individuals representing institutions of higher education and  
7 having the necessary credentials to provide an inventory of and  
8 advise the fund on the available research and development  
9 enterprises that are or will be established by higher education  
10 institutions and the application of that technology to business and  
11 industry.

12 (b) The advisory committee under Subsection (a)(1) of this  
13 section must include one individual nominated by the speaker of the  
14 house of representatives and one individual nominated by the  
15 lieutenant governor.

16 CHAPTER 107. CENTER FOR PRODUCT DEVELOPMENT

17 SECTION 107.01. ESTABLISHMENT AND OPERATION OF CENTER. The  
18 fund shall establish and operate a center for product development.

19 SECTION 107.02. PRODUCT DEVELOPMENT PROGRAM ACCOUNT. (a)  
20 The center for product development shall be funded by an account  
21 established and managed by the fund, to be known as the product  
22 development program account.

23 (b) The fund shall pay into the account money:

24 (1) appropriated or otherwise provided by this state  
25 for the purposes of the center for product development;

26 (2) determined by the fund to be paid into the account  
27 from the economic development fund;

1           (3) that the fund receives in return for investments  
2 made through the center for product development; or

3           (4) otherwise made available to the fund for the  
4 purposes of the center from any other source, public or private.

5           (c) Money in the product development program account may be  
6 transferred into any other account established by the fund unless  
7 the fund is otherwise obligated to retain the money in the product  
8 development program account or the money was appropriated by this  
9 state for the purposes of the center or represents interest earned  
10 from appropriations while on deposit in the account. The fund may  
11 deposit money earned by the fund from royalties, rights, or other  
12 benefits under Section 107.03 or 107.06 of this title in any  
13 account established by the fund.

14           SECTION 107.03. USE OF PRODUCT DEVELOPMENT PROGRAM ACCOUNT  
15 FUNDS. (a) The fund may use the money in the product development  
16 program account to provide financial aid to applicants if financial  
17 aid would not otherwise be available on reasonable terms from other  
18 sources. The fund shall enter into venture agreements under which  
19 the fund will obtain royalties, rights, or other benefits from or  
20 in an invention, product, device, or technique in exchange for the  
21 granting of financial aid to the applicant.

22           (b) Financial aid provided from the product development  
23 program account must be for the purpose of financing a new process,  
24 technique, product, or device that is or may be exploitable  
25 commercially, that has advanced beyond the theoretical state, and  
26 that is capable of being or has been reduced to practice without  
27 regard to whether a patent has been or could be granted.

1           (c) Financial aid provided and venture agreements made by  
2 the fund may be on terms and conditions the fund determines to be  
3 reasonable, appropriate, and consistent with the purposes and  
4 objectives of the fund and this chapter, including the requirements  
5 of Section 101.09 of this title.

6           (d) Financial aid provided and venture agreements made under  
7 this section shall be made on the condition that the benefits of  
8 increasing employment and tax revenues remain in the state.

9           SECTION 107.04. ENTITIES ENTITLED TO RECEIVE FINANCIAL AID  
10 FROM PRODUCT DEVELOPMENT PROGRAM ACCOUNT. Financial aid provided  
11 from the product development program account may be made to any  
12 individual, partnership, profit or nonprofit corporation, college  
13 or university, or joint venture carrying on business or proposing  
14 to carry on business within this state.

15           SECTION 107.05. EVALUATION PREREQUISITE TO DETERMINATION OF  
16 FINANCIAL AID TO BE AWARDED AND TERMS OF VENTURE AGREEMENT. In  
17 determining the amount of financial aid to be awarded and the terms  
18 of the venture agreement, the fund shall evaluate appropriate  
19 factors, including:

20                   (1) the necessity of fund participation in the  
21 enterprise;

22                   (2) the diversity of products and types of business  
23 concerns for which the fund has provided financial aid under this  
24 chapter;

25                   (3) the availability of funding sources on reasonable  
26 terms in the traditional capital markets;

27                   (4) the management structure and expertise of the



1 enterprise;

2 (5) the state of development of the proposed product,  
3 process, technique, or device and the likelihood of its commercial  
4 feasibility;

5 (6) the report and recommendations of the advisory  
6 panel created under Section 107.07 of this title; and

7 (7) the extent to which the enterprise has a  
8 cooperative arrangement with a college or university in this state.

9 SECTION 107.06. NONPROFIT CORPORATION FINANCIAL AID  
10 RECIPIENTS: QUALIFICATIONS, POWERS, DUTIES; VENTURE AGREEMENTS;  
11 FUND AS PARTY; CONTENTS OF AGREEMENT. (a) The fund may provide  
12 financial aid to a nonprofit corporation that has as its only  
13 purposes the same purposes as this chapter. Except as provided by  
14 Subsection (b) of this section, a corporation receiving financial  
15 aid under this section has the same powers and duties provided by  
16 this chapter to the fund.

17 (b) The fund must be a party to a venture agreement made by  
18 a corporation receiving financial aid under this section. The  
19 venture agreement shall provide that the fund obtain royalties or  
20 rights, or other benefits from or in an invention, product, device,  
21 or technique or that are obtained by the corporation in exchange  
22 for the granting of financial aid to an applicant.

23 SECTION 107.07. ADVISORY PANEL. An advisory panel shall be  
24 appointed by the fund to consider proposals for venture agreements  
25 and financial aid from the product development program account.  
26 The panel shall be composed of five members having skills and  
27 experience in providing capital to innovative businesses, in

1 starting and operating those businesses, or in providing  
2 professional and technical services to or otherwise working with  
3 those businesses. The advisory panel shall report to the fund its  
4 analysis and recommendations on the proposal for financial aid and  
5 a venture agreement.

6 TITLE II. BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS

7 CHAPTER 201. GENERAL PROVISIONS

8 SECTION 201.01. DEFINITIONS. In this title:

9 (1) "Affiliate" means, with respect to a specific  
10 business firm, a business firm controlling or controlled by that  
11 business firm, or a business firm controlled by the same person who  
12 controls that business firm.

13 (2) "BIDCO" means a business and industrial  
14 development corporation licensed under this title.

15 (3) "Business firm" means a person that transacts or  
16 proposes to transact business on a regular and continual basis.

17 (4) "Commissioner" means the banking commissioner.

18 (5) "Control" means to direct, directly or indirectly  
19 through one or more intermediaries, the management and policies of  
20 a business firm. An individual is not considered to control a  
21 business firm solely because of being a director, officer, or  
22 employee of that business firm. A person who, directly or  
23 indirectly, owns of record or beneficially holds with power to  
24 vote, or holds proxies with discretionary authority to vote, 20  
25 percent or more of the then outstanding voting securities issued by  
26 a corporation is presumed to control that corporation.

27 (6) "Corporation" means a corporation organized under

1 the Texas Business Corporation Act or the Texas Non-Profit  
2 Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil  
3 Statutes).

4 (7) "Incorporating statute" means the Act under which  
5 a corporation is organized.

6 (8) "Insolvent" means unable to pay debts in the  
7 ordinary course of business as they become due, or having  
8 liabilities exceeding assets.

9 (9) "Interests of the licensee" includes the interests  
10 of shareholders of the licensee.

11 (10) "License" means a license issued under this title  
12 authorizing a corporation to transact business as a BIDCO.

13 (11) "Licensee" means a corporation that is licensed  
14 under this title.

15 (12) "Nonprofit corporation" means a corporation  
16 organized under the Texas Non-Profit Corporation Act (Article  
17 1396-1.01 et seq., Vernon's Texas Civil Statutes).

18 (13) "Officer" means:

19 (A) with respect to a corporation, a person  
20 appointed or designated as an officer of that corporation by or  
21 under applicable law or the articles of incorporation or bylaws of  
22 that corporation, or a person who performs with respect to that  
23 corporation functions usually performed by an officer of a  
24 corporation; or

25 (B) with respect to a business firm other than a  
26 corporation, a person who performs with respect to that business  
27 firm functions usually performed by an officer of a corporation

1 with respect to that corporation.

2 (14) "Order" means an approval, consent,  
3 authorization, exemption, denial, prohibition, or requirement  
4 issued by the commissioner applicable to a specific case. The term  
5 includes a condition of a license and an agreement between a person  
6 and the commissioner under this title.

7 (15) "Person" means an individual, association,  
8 corporation, government, agency of a government, or any other  
9 entity.

10 (16) "Principal shareholder" means a person that,  
11 directly, indirectly, legally, or equitably, owns securities  
12 representing 10 percent or more of the outstanding voting  
13 securities of a corporation.

14 (17) "Subject person" means a controlling person,  
15 subsidiary, or affiliate of a licensee; a director, officer, or  
16 employee of a licensee or of a controlling person, subsidiary, or  
17 affiliate of a licensee; or any other person who participates in  
18 the conduct of the business of a licensee.

19 (18) "Subsidiary" means a business firm which the  
20 licensee holds control of as permitted by Sections 205.04(c), (d),  
21 and (e) of this title.

22 CHAPTER 202. REGULATION, REPORTING, AND EXAMINATION

23 SECTION 202.01. ADMINISTRATION. (a) The commissioner shall  
24 administer this title. The commissioner may issue orders and adopt  
25 rules that, in the opinion of the commissioner, are necessary to  
26 carry out the purposes of this title.

27 (b) The commissioner may impose conditions on an order or

1 license that are necessary, in the opinion of the commissioner, to  
2 carry out the purposes of this title.

3 (c) The commissioner may honor applications from interested  
4 persons for declaratory rulings regarding this title.

5 (d) A final order, decision, license, or other official act  
6 of the commissioner under this title is subject to judicial review  
7 in accordance with law.

8 SECTION 202.02. APPLICATION FORM. An application filed with  
9 the commissioner under this title must be in the form and contain  
10 the information that the commissioner by rule requires.

11 SECTION 202.03. INVESTIGATIONS AND PROCEEDINGS. (a) The  
12 commissioner may make public or private investigations inside or  
13 outside this state that the commissioner considers necessary to:

14 (1) determine whether to approve an application filed  
15 with the commissioner under this title;

16 (2) determine whether a person has violated or is  
17 about to violate this title;

18 (3) aid in the enforcement of this title; or

19 (4) aid in issuing an order or adopting a rule under  
20 this title.

21 (b) For purposes of an investigation, examination, or other  
22 proceeding under this title, the commissioner may administer oaths  
23 and affirmations, subpoena witnesses, compel the attendance of  
24 witnesses, take evidence, and require the production of books,  
25 papers, correspondence, memoranda, agreements, or other documents  
26 or records that the commissioner considers relevant or material to  
27 the proceeding.

1           (c) If a person fails to comply with a subpoena issued by  
2 the commissioner or to testify with respect to a matter concerning  
3 which the person may be lawfully questioned, the district court of  
4 Travis County, on application of the commissioner, may issue an  
5 order requiring the attendance of the person and the giving of  
6 testimony or production of evidence.

7           SECTION 202.04. PROCESS. Service of process authorized to  
8 be made by the commissioner in connection with a noncriminal  
9 proceeding under this title may be made by registered or certified  
10 mail.

11           SECTION 202.05. FEES. (a) The commissioner shall collect  
12 the following fees:

13                   (1) for filing an application for a license, \$2,500;

14                   (2) for filing an application for approval to acquire  
15 control of a licensee, \$1,250;

16                   (3) for filing an application for approval for a  
17 licensee to merge with another corporation, an application for  
18 approval for a licensee to purchase all or substantially all of the  
19 business of another business firm, or an application for approval  
20 for a licensee to sell all or substantially all of its business or  
21 the business of any of its offices to another licensee, \$1,250; but  
22 if two or more applications relating to the same merger, purchase,  
23 or sale are filed, the fee for filing each application is the  
24 amount computed by dividing \$1,250 by the number of related  
25 applications; and

26                   (4) for a licensee, \$2,500 annually, payable at a time  
27 prescribed by the commissioner.

1 (b) If the commissioner examines a licensee or a subsidiary  
2 of a licensee, within 10 days after the day the licensee receives a  
3 statement from the commissioner, the licensee shall pay a fee  
4 established by the commissioner based on the number of examiner  
5 hours used for the examination, plus travel expenses. Examiner  
6 time shall be billed at a rate not less than \$25 an hour nor more  
7 than \$40 an hour.

8 (c) A fee for filing an application with the commissioner is  
9 nonrefundable and shall be paid at the time the application is  
10 filed with the commissioner.

11 (d) A fee collected under this section shall be paid into  
12 the state treasury and may be used only for the operation of the  
13 Banking Department of Texas.

14 SECTION 202.06. LICENSEE RECORDS. (a) A licensee shall  
15 make and keep books, accounts, and other records in the form and  
16 manner that the commissioner by rule requires. Those records must  
17 be kept at a place and preserved for a period that the commissioner  
18 by rule specifies.

19 (b) The commissioner may require by order that a licensee  
20 records an asset on its books and records at a valuation that  
21 represents its current value.

22 (c) Within 90 days after the end of each calendar year, or a  
23 longer period specified by the commissioner, a licensee shall file  
24 with the commissioner an audit report containing:

25 (1) financial statements, including a balance sheet,  
26 statement of income or loss, statement of changes in capital  
27 accounts, and statement of changes in financial position, or

1 comparable financial statements for a licensee that is a nonprofit  
2 corporation, for or as of the end of the calendar year, prepared  
3 with an audit by an independent public accountant according to  
4 generally accepted accounting principles;

5 (2) a report, certificate, or opinion of the  
6 independent public accountant stating that the financial statements  
7 were prepared according to generally accepted accounting  
8 principles; and

9 (3) other information that the commissioner requires.

10 SECTION 202.07. KEEPING OF RECORDS BY OTHER PERSON. (a) If  
11 a person other than a licensee makes or keeps the books, accounts,  
12 or other records of that licensee, this title applies to that  
13 person with respect to the performance of those services and with  
14 respect to those books, accounts, and other records to the same  
15 extent as if that person were the licensee.

16 (b) If a person other than an affiliate or subsidiary of a  
17 licensee makes or keeps any of the books, accounts, or other  
18 records of that affiliate or subsidiary, this title applies to that  
19 person with respect to those books, accounts, and other records to  
20 the same extent as if that person were the affiliate or subsidiary.

21 (c) If the commissioner considers it appropriate, the  
22 commissioner may require a licensee to obtain the approval of the  
23 commissioner before permitting another person to make or keep any  
24 of the books, accounts, or other records of the licensee.

25 SECTION 202.08. REPORTS BY LICENSEE. Each licensee, each  
26 affiliate of a licensee, and each subsidiary of a licensee shall  
27 file with the commissioner reports that the commissioner requires.



1 A report under this section must be in the form and contain the  
2 information that the commissioner by rule requires.

3 SECTION 202.09. REPORTS BY COMMISSIONER. The commissioner  
4 annually shall publish and provide to the business and commerce  
5 committee of the house of representatives and the senate committee  
6 on economic development, trade and tourism information on the  
7 effect of this title in promoting economic development in this  
8 state. The information must include:

9 (1) the number of recipients and total dollar amount  
10 of financing assistance made by licensees to business firms  
11 classified according to categories of industry;

12 (2) the number of recipients and total dollar amount  
13 of financing assistance made by licensees to minority owned  
14 business firms and woman owned business firms; and

15 (3) estimates of the number of jobs created or  
16 retained.

17 SECTION 202.10. EXAMINATIONS. (a) The commissioner shall  
18 examine each licensee at least once each calendar year.

19 (b) The commissioner may at any time examine a licensee or  
20 subsidiary of a licensee.

21 (c) A director, officer, or employee of a licensee or of a  
22 subsidiary of a licensee being examined by the commissioner, or a  
23 person having custody of any of the books, accounts, or records of  
24 the licensee or of the subsidiary, shall exhibit to the  
25 commissioner, on request, any of those books, accounts, and other  
26 records and shall otherwise facilitate the examination to the  
27 extent possible.

1           (d) If the commissioner determines that it is necessary in  
2 the examination of a licensee or of a subsidiary of a licensee, the  
3 commissioner may retain a certified public accountant, attorney,  
4 appraiser, or other person to assist the commissioner. Within 10  
5 days after the date of receipt of a statement from the  
6 commissioner, the licensee or subsidiary examined shall pay the  
7 fees of a person retained by the commissioner under this  
8 subsection.

9                               CHAPTER 203. LICENSING

10           SECTION 203.01. ELIGIBLE APPLICANTS. A corporation may  
11 apply to the commissioner for a license as a BIDCO.

12           SECTION 203.02. APPROVAL OF APPLICATION. (a) After a  
13 review of information regarding the directors, officers, and  
14 controlling persons of the applicant, a review of the applicant's  
15 business plan, including at least three years of detailed financial  
16 projections and other relevant information, and a review of  
17 additional information considered relevant by the commissioner, the  
18 commissioner shall approve an application for a license only if the  
19 commissioner determines that:

20                       (1) the applicant has a net worth, or firm financing  
21 commitments that demonstrate that the applicant will have a net  
22 worth when the applicant begins transacting business as a BIDCO, in  
23 liquid form available to provide financing assistance, that is  
24 adequate for the applicant to transact business as a BIDCO as  
25 determined under Subsection (b) of this section;

26                       (2) each director, officer, and controlling person of  
27 the applicant is of good character and sound financial standing;

1           (3) each director and officer of the applicant is  
2 competent to perform the person's functions with respect to the  
3 applicant;

4           (4) the directors and officers of the applicant are  
5 collectively adequate to manage the business of the applicant as a  
6 BIDCO;

7           (5) it is reasonable to believe that the applicant  
8 will comply with this title; and

9           (6) the applicant has reasonable promise of being a  
10 viable BIDCO and of satisfying the basic objectives of its business  
11 plan.

12           (b) In determining if the applicant has a net worth or firm  
13 financing commitments adequate to transact business as a BIDCO, the  
14 commissioner shall consider the types and variety of financing  
15 assistance that the applicant plans to provide, the experience that  
16 the directors, officers, and controlling persons of the applicant  
17 have in providing financing and managerial assistance to business  
18 firms, the financial projections and other relevant information  
19 from the applicant's business plan, and whether the applicant  
20 intends to operate as a profit or nonprofit corporation. Except as  
21 otherwise provided by this title, the commissioner shall require a  
22 net worth of not less than \$1 million and not more than \$10  
23 million. The commissioner may permit a net worth of less than \$1  
24 million, but not less than \$500,000, if, in the context of the  
25 applicant's business plan, the initial capitalization amount is  
26 adequate for the applicant to transact business as a BIDCO because  
27 of special circumstances including funded overhead, low overhead,

1 or specialized opportunities.

2 (c) For the purposes of Subsection (a) of this section, the  
3 commissioner may find:

4 (1) that a director, officer, or controlling person of  
5 an applicant is not of good character because the director,  
6 officer, or controlling person, or a director or officer of a  
7 controlling person, has been convicted of or has pleaded nolo  
8 contendere to a crime involving fraud or dishonesty, or because of  
9 other reasons; or

10 (2) that it is not reasonable to believe that an  
11 applicant, if licensed, will comply with this title, because the  
12 applicant has been convicted of or has pleaded nolo contendere to a  
13 crime involving fraud or dishonesty or because of other reasons.

14 SECTION 203.03. PRELIMINARY APPROVAL. A person may apply to  
15 the commissioner for preliminary approval of an application for a  
16 license. The commissioner may grant preliminary approval  
17 regardless of whether commitments to invest in the equity of the  
18 applicant have been obtained or whether all directors and officers  
19 of the applicant have been identified. In issuing an order  
20 granting preliminary approval, the commissioner shall indicate that  
21 final approval is conditioned on review by the commissioner of the  
22 applicant's completion of fund-raising and review by the  
23 commissioner of the completion of the roster of directors and  
24 officers. Before granting final approval of the application for  
25 the license, the commissioner may request an updated balance sheet  
26 and other information considered relevant by the commissioner.

27 SECTION 203.04. DENIAL. If the commissioner denies an

1 application for a license, the commissioner shall provide the  
2 applicant with a written statement explaining the reason for the  
3 denial.

4 SECTION 203.05. ISSUANCE. If an application for a license  
5 is approved and all conditions precedent to the issuance of that  
6 license are fulfilled, the commissioner shall issue a license to  
7 the applicant. A licensee shall post the license in a conspicuous  
8 place in the licensee's principal office. A license is not  
9 transferable or assignable.

10 SECTION 203.06. USE OF NAME. (a) Except as otherwise  
11 provided by Subsection (b) of this section, a person transacting  
12 business in this state, other than a licensee, may not use a name  
13 or title that indicates that the person is a business and  
14 industrial development corporation including use of the term  
15 "BIDCO," and may not otherwise represent that the person is a  
16 business and industrial development corporation or a licensee.

17 (b) Before being issued a license under this title, a  
18 corporation that proposes to apply for a license or that applies  
19 for a license may perform, under a name that indicates that the  
20 corporation is a business and industrial development corporation,  
21 the acts necessary to apply for and obtain a license and to  
22 otherwise prepare to transact business as a licensee. The  
23 corporation may not represent that it is a licensee until a license  
24 has been obtained.

25 SECTION 203.07. MISREPRESENTING MEANING AND EFFECT OF  
26 LICENSE. A licensee may not misrepresent the meaning or effect of  
27 its license.

1           SECTION 203.08.   LICENSING    UNDER   OTHER   LAW.    (a)    A  
2   corporation that is licensed under another law of this state or  
3   under any law of the United States may apply for and be issued a  
4   license under this title unless the transaction of business by that  
5   corporation as a licensee under another law of this state or a law  
6   of the United States violates this title or is contrary to the  
7   purposes of this title.

8           (b) A corporation that is licensed under this title may  
9   apply for and be issued a license under another law of this state  
10   or a law of the United States unless the transaction of business by  
11   that corporation as a licensee under another law of this state or a  
12   law of the United States would violate this title or would be  
13   contrary to the purposes of this title.

14          SECTION 203.09.   SURRENDER OF LICENSE.   (a) On approval of a  
15   two-thirds vote of its board of directors and after complying with  
16   Subsection (b) of this section, a licensee may apply to the  
17   commissioner to have the commissioner accept the surrender of the  
18   licensee's license. If the commissioner determines that the  
19   requirements of this section have been satisfied, the commissioner  
20   shall approve the application unless in the opinion of the  
21   commissioner the purpose of the application is to evade a current  
22   or prospective action by the commissioner under Chapter 207 of this  
23   title.

24          (b) Not less than 60 days before the date of filing an  
25   application with the commissioner under Subsection (a) of this  
26   section, a licensee shall notify each of its shareholders and  
27   creditors of its intention to file the application. Each creditor

1 shall be notified of the right to comment to the commissioner  
2 concerning the proposed surrender. Each shareholder shall be  
3 notified of the right to file with the licensee an objection to the  
4 proposed surrender of the license within the 60-day period and  
5 shall be advised that, if the shareholder files an objection, the  
6 shareholder should send a copy of the objection to the  
7 commissioner. If shareholders representing 20 percent of the  
8 outstanding voting securities of the licensee file an objection,  
9 the licensee may not proceed with the application under Subsection  
10 (a) of this section unless the application is approved by a vote of  
11 shareholders representing two-thirds of the outstanding voting  
12 securities of the licensee.

#### 13 CHAPTER 204. CORPORATE MATTERS

14 SECTION 204.01. CORPORATE NAME. The corporate name of each  
15 licensee must include the word "BIDCO." A licensee may not  
16 transact business under a name other than its corporate name.

17 SECTION 204.02. DIRECTORS; MEETING. (a) The board of  
18 directors of each licensee must consist of not less than seven  
19 directors.

20 (b) The board of directors of each licensee shall hold a  
21 meeting not less than once each calendar quarter.

22 SECTION 204.03. NOTICE OF CHANGE. Within 30 days after the  
23 date of the death, resignation, or removal of a director or  
24 officer, the election of a director, or the appointment of an  
25 officer, the licensee shall notify the commissioner in writing of  
26 the event and shall provide any additional information that the  
27 commissioner requires.

1           SECTION 204.04. DIVIDENDS.   (a) A licensee may not pay, or  
2 obligate itself to pay, a cash dividend or dividend in kind to its  
3 shareholders, unless that payment is consistent with a dividend  
4 policy that has been adopted by the licensee and approved by the  
5 commissioner. In reviewing dividend policies under this section,  
6 the commissioner shall be flexible in recognizing the special  
7 characteristics of BIDCOs and the diverse range of potentially  
8 appropriate dividend policies for BIDCOs, while protecting against  
9 unsafe or unsound acts that could threaten the viability of the  
10 licensee as an ongoing BIDCO. The commissioner may at any time  
11 withdraw a previous approval of a dividend policy if the  
12 commissioner determines that the withdrawal is necessary to prevent  
13 unsafe or unsound acts.

14           (b) Without the prior approval of the commissioner a  
15 licensee may not buy back or obligate itself to buy back a share of  
16 stock from a shareholder.

17           CHAPTER 205. TRANSACTION OF BUSINESS

18           SECTION 205.01. OFFICE.   (a) A licensee shall maintain not  
19 less than one office in this state.

20           (b) A licensee may not maintain an office at any place  
21 outside this state.

22           (c) Each office of a licensee must be located in a place  
23 that is reasonably accessible to the public.

24           (d) A licensee shall post in a conspicuous place at each of  
25 its offices a sign that bears the corporate name of the licensee.

26           (e) A licensee shall maintain at each of its offices  
27 personnel who are competent to conduct the business of the office.



1           (f) On written notice to the commissioner, a licensee may  
2 establish, relocate, or close an office.

3           SECTION 205.02. LICENSEE BUSINESS. (a) The business of a  
4 licensee shall be providing financing assistance and management  
5 assistance to business firms. A licensee may engage in no other  
6 business.

7           (b) In addition to the powers and privileges provided to a  
8 licensee by this title, a licensee has all powers and privileges  
9 conferred by its incorporating statute that are not inconsistent  
10 with or limited by this title. A licensee may:

11           (1) borrow money and otherwise incur debt for its  
12 purposes, including issuance of corporate bonds, debentures, or  
13 other evidence of indebtedness; a licensee's indebtedness may be  
14 secured or unsecured, and may involve equity features including  
15 provisions for conversion to stock and warrants to purchase stock;

16           (2) make contracts;

17           (3) incur and pay necessary and incidental operating  
18 expenses;

19           (4) purchase, receive, hold, lease, or otherwise  
20 acquire, or sell, convey, mortgage, lease, pledge, or otherwise  
21 dispose of, real or personal property, together with rights and  
22 privileges that are incidental and appurtenant to those  
23 transactions, if the property is for the licensee's use in  
24 operating its business or if the property is acquired by the  
25 licensee in satisfaction of debts or enforcement of obligations;

26           (5) make donations for charitable, educational,  
27 research, or similar purposes; and

1           (6) implement a reasonable and prudent policy for  
2 conserving and investing its money before the money is used to  
3 provide financing assistance to business firms or to pay the  
4 expenses of the licensee.

5           SECTION 205.03. FORM OF ASSISTANCE. (a) A licensee may  
6 determine the form and the terms and conditions for financing  
7 assistance provided by that licensee to a business firm including  
8 forms such as loans; purchase of debt instruments; straight equity  
9 investments such as purchase of common stock or preferred stock;  
10 debt with equity features such as warrants to purchase stock,  
11 convertible debentures, or receipt of a percentage of net income or  
12 sales; royalty-based financing; guaranteeing of debt; or leasing of  
13 property. A licensee may purchase securities of a business firm  
14 either directly or through an underwriter. A licensee may  
15 participate in the program of the small business administration  
16 under Section 7(a), Small Business Act (15 U.S.C. Section 636(a)),  
17 or any other government program for which the licensee is eligible  
18 and that has as its function the provision or facilitation of  
19 financing assistance or management assistance to business firms.  
20 If a licensee participates in such a program, the licensee shall  
21 comply with the requirements of that program.

22           (b) Management assistance provided by a licensee to a  
23 business firm may include both management or technical advice and  
24 management or technical services.

25           (c) Financing assistance or management assistance provided  
26 by a licensee to a business firm must be for the business purposes  
27 of that business firm.

1           (d) A licensee may exercise the incidental powers that are  
2 necessary or convenient to carry on, or are reasonably related to,  
3 the business of providing financing assistance and management  
4 assistance to business firms.

5           (e) Except as provided by Subsection (f) of this section, in  
6 connection with an extension of credit by a person to a licensee or  
7 an extension of credit by a licensee to a business entity, the  
8 parties may agree to any rate of interest, including a rate in  
9 excess of the rate permitted by Title 79, Revised Statutes.

10          (f) In connection with an extension of credit under  
11 Subsection (e) of this section, a person may not knowingly charge,  
12 take, or receive money or other property as interest on the loan at  
13 a rate exceeding 25 percent simple interest a year. A person that  
14 violates this subsection commits an offense. An offense under this  
15 subsection is a felony of the second degree. As used in this  
16 subsection, "interest" does not include anything of value that is  
17 contingent on the performance or value of the borrower, including  
18 a percentage of net income of the borrower, royalties, stock in the  
19 borrower, warrants to purchase stock in the borrower, and  
20 convertibility of debentures.

21          SECTION 205.04. RELATIONS WITH OTHER BUSINESSES. (a)  
22 Except as provided by this section, a licensee may not control a  
23 business firm either by itself or together with a director,  
24 officer, principal shareholder, or affiliate; another licensee; or  
25 a director, officer, principal shareholder, or affiliate of another  
26 licensee.

27          (b) To the extent necessary to protect the licensee's

1 interest as creditor of, or investor in, the business firm, a  
2 licensee that had provided financing assistance to a business firm  
3 may acquire and control that business firm. Unless the  
4 commissioner approves a longer period, a licensee controlling a  
5 business firm under this subsection shall divest itself of the  
6 interest as soon as practicable but not later than three years  
7 after acquiring that interest.

8 (c) With the approval of the commissioner, a licensee may  
9 acquire and control a corporation that has offices located only in  
10 this state and that is licensed as a small business investment  
11 company under the Small Business Investment Act of 1958 (15 U.S.C.  
12 Sections 695-697).

13 (d) With the approval of the commissioner, a licensee may  
14 acquire and control a company located in this state that is a local  
15 development company under the Small Business Investment Act of  
16 1958, whether or not certified by the small business administration  
17 under Section 503 of the Small Business Investment Act of 1958  
18 (15 U.S.C. Section 697).

19 (e) With the approval of the commissioner, a licensee may  
20 acquire and control another business firm with offices only in this  
21 state that is engaged in no business other than the business of  
22 providing financing assistance and management assistance to  
23 business firms.

24 (f) The commissioner may approve other situations in which a  
25 licensee may acquire and control a business firm. The commissioner  
26 may not approve an application under this subsection unless the  
27 commissioner determines that the approval will not cause the amount

1 of the licensee's investments in business firms covered by this  
2 subsection to exceed 15 percent of the amount of the assets of the  
3 licensee and that in the commissioner's judgment the approval will  
4 promote the purposes of this title. An approval by the  
5 commissioner under this subsection may be for a period of not more  
6 than three years, except that in a particular case the commissioner  
7 may extend the period beyond three years if the commissioner  
8 determines that a longer period is needed and consistent with the  
9 purposes of this title.

10 (g) If the commissioner fails to issue an order approving or  
11 denying an application under Subsection (c) or (d) of this section,  
12 within 45 days after the date of receipt by the commissioner of a  
13 completed application, the application is considered approved.

14 (h) For the purposes of this section, "control" means to  
15 hold the ownership, directly or indirectly, of record or  
16 beneficially, of voting securities representing more than:

17 (1) for a business firm with outstanding voting  
18 securities held by fewer than 50 shareholders, 40 percent of the  
19 outstanding voting securities; or

20 (2) for a business firm with outstanding voting  
21 securities held by 50 or more shareholders, 25 percent of the  
22 outstanding voting securities.

23 (i) If a licensee anticipates acquiring and controlling a  
24 business firm under Subsection (b) of this section, the licensee  
25 shall file with the commissioner a plan for acquisition and control  
26 that includes:

27 (1) the reasons it is necessary for the licensee to

1     acquire and control the business firm;

2             (2)   the percentage of outstanding voting securities of  
3     the business firm the licensee plans to own;

4             (3)   the licensee's proposed course of action after  
5     obtaining control of the business firm; and

6             (4)   the length of time the licensee anticipates it  
7     will be necessary to control the business firm.

8             (j)   The commissioner may require the licensee to demonstrate  
9     the necessity for the licensee to control a business firm under  
10    Subsection (b) of this section.

11            SECTION 205.05.   SAFE   AND   SOUND OPERATION.   (a)   A licensee  
12    shall transact its business in a safe and sound manner and shall  
13    maintain itself in a safe and sound condition.

14            (b)   In determining whether a licensee is transacting  
15    business in a safe and sound manner or has committed an unsafe or  
16    unsound act, the commissioner may not consider the risk of  
17    providing financing assistance to a business firm, unless the  
18    commissioner determines that the risk is so great compared with the  
19    realistically expected return as to demonstrate gross  
20    mismanagement.

21            (c)   Subsection (b) of this section does not limit the  
22    authority of the commissioner to:

23            (1)   determine that a licensee's financing assistance  
24    to a single business firm or a group of affiliated business firms  
25    is in violation of Subsection (a) of this section or constitutes an  
26    unsafe or unsound act, if the amount of that financing assistance  
27    is unduly large in relation to the total assets or the total

1 shareholders' equity of the licensee;

2 (2) require that a licensee maintain a reserve in the  
3 amount of anticipated losses; or

4 (3) require that a licensee have in effect a written  
5 financing assistance policy, approved by its board of directors,  
6 including credit evaluation and other matters.

7 (d) The commissioner may not require that a licensee adopt a  
8 financing assistance policy that contains standards that prevent  
9 the licensee from exercising needed flexibility in evaluating and  
10 structuring financing assistance to business firms on a  
11 deal-by-deal basis.

12 SECTION 205.06. CONFLICTS OF INTEREST. (a) For purposes of  
13 this section:

14 (1) "Associate" has the meaning assigned by Chapter  
15 208 of this title.

16 (2) "Relative" means parent, child, sibling, spouse,  
17 father-in-law, mother-in-law, son-in-law, brother-in-law,  
18 daughter-in-law, sister-in-law, grandparent, grandchild, nephew,  
19 niece, uncle, or aunt.

20 (b) If a licensee provides financing assistance to a  
21 business firm or engages in another business transaction, and if  
22 that financing assistance or transaction involves a potential  
23 conflict of interest, the terms and conditions under which the  
24 licensee provides the financing assistance or engages in the  
25 transaction may not be less favorable to the licensee than the  
26 terms and conditions that would be required by the licensee in the  
27 ordinary course of business if the transaction did not involve a

1 potential conflict of interest. Each person who participates in  
2 the decision of the licensee relating to a transaction described in  
3 this section and has knowledge of a potential conflict of interest  
4 involving that transaction shall disclose the potential conflict of  
5 interest in the financing documents of the transaction or, for a  
6 business transaction not involving financing assistance, in another  
7 appropriate document.

8 (c) For the purposes of Subsection (b) of this section,  
9 transactions engaged in by a licensee that involve a potential  
10 conflict of interest include:

11 (1) providing financing assistance to a principal  
12 shareholder of the licensee, to a person controlled by a principal  
13 shareholder of the licensee, or to a director, officer, partner,  
14 relative, controlling person, or affiliate of a principal  
15 shareholder of the licensee;

16 (2) providing financing assistance to a business firm  
17 to which a principal shareholder of the licensee; a director,  
18 officer, partner, relative, controlling person, or affiliate of a  
19 principal shareholder of a licensee; or a person controlled by a  
20 principal shareholder of the licensee provides or plans to provide  
21 contemporaneous financing assistance;

22 (3) providing financing assistance to a business firm  
23 that has or is expected to have a substantial business relationship  
24 with another business firm that has a director, officer, or  
25 controlling person who is also a director, officer, or controlling  
26 person of the licensee or who is the spouse of a director, officer,  
27 or controlling person of the licensee;



1           (4) providing financing assistance to a business firm  
2 if that business firm, or a director, officer, or controlling  
3 person of that business firm, contemporaneously has lent or will  
4 lend money to an associate of the licensee;

5           (5) providing financing assistance for the purchase of  
6 property of an associate or principal shareholder of the licensee;  
7 and

8           (6) selling or otherwise transferring any of its  
9 assets to an associate or principal shareholder of the licensee.

10          (d) This title does not limit the authority of the  
11 commissioner to determine that an act involves a conflict of  
12 interest and is an unsafe or unsound act.

13          SECTION 205.07. PROHIBITED LIENS. Except with the approval  
14 of the commissioner, a licensee may not provide a lien on or  
15 security interest in any of its property for the purpose of  
16 securing an obligation of, or an obligation incurred for the  
17 benefit of, another person.

#### 18           CHAPTER 206. MERGERS AND ACQUISITIONS

19          SECTION 206.01. ACQUISITION OF CONTROL. (a) A person may  
20 not acquire control of a licensee without the prior approval of the  
21 commissioner.

22          (b) With respect to an application for approval to acquire  
23 control of a licensee, the commissioner shall approve the  
24 application if the commissioner determines that the applicant and  
25 the directors and officers of the applicant are of good character  
26 and sound financial standing, that it is reasonable to believe  
27 that, if the applicant acquires control of the licensee, the

1 applicant will comply with this title, and that the applicant's  
2 plans, if any, to make a major change in the business, corporate  
3 structure, or management of the licensee are not detrimental to the  
4 safety and soundness of the licensee. If, after notice and a  
5 hearing, the commissioner determines otherwise, the commissioner  
6 shall deny the application.

7 (c) For purposes of Subsection (b) of this section, the  
8 commissioner may determine that:

9 (1) an applicant or a director or officer of an  
10 applicant is not of good character because that person has been  
11 convicted of, or has pleaded nolo contendere to, a crime involving  
12 fraud or dishonesty, or because of other reasons; or

13 (2) an applicant's plan to make a major change in the  
14 management of a licensee is detrimental to the safety and soundness  
15 of the licensee because the plan provides for a person to become a  
16 director or officer of the licensee and that person has been  
17 convicted of, or has pleaded nolo contendere to, a crime involving  
18 fraud or dishonesty, or because of other reasons.

19 SECTION 206.02. MERGER, PURCHASE, OR SALE. (a) A licensee  
20 shall not merge with another corporation unless the surviving  
21 corporation is a licensee and the merger is approved by the  
22 commissioner.

23 (b) A licensee may not purchase all or substantially all of  
24 the business of another person unless the purchase is approved by  
25 the commissioner.

26 (c) A licensee may not sell all or substantially all of its  
27 business, or the business of any of its offices, to another person

1 unless the other person is a licensee and the sale is approved by  
2 the commissioner.

3 (d) The commissioner shall approve an application for  
4 approval of a merger, purchase, or sale only if the commissioner  
5 determines that:

6 (1) the merger, purchase, or sale will be safe and  
7 sound with respect to the surviving or acquiring licensee;

8 (2) on consummation of the merger, purchase, or sale,  
9 it is reasonable to believe that the surviving or acquiring  
10 licensee will comply with this title; and

11 (3) the merger, purchase, or sale will not have a  
12 major detrimental impact on competition in the providing of  
13 financial assistance or management assistance to business firms, or  
14 if there will be a detrimental impact, the merger, purchase, or  
15 sale is necessary in the interests of the safety and soundness of  
16 any of the parties to the merger, purchase, or sale, or is  
17 otherwise in the public interest.

#### 18 CHAPTER 207. ENFORCEMENT

19 SECTION 207.01. INJUNCTION. If the commissioner believes  
20 that a person is violating or is about to violate this title, the  
21 commissioner may bring an action to enjoin the violation or to  
22 enforce compliance with this title. On a proper showing, a  
23 restraining order, preliminary or permanent injunction, or writ of  
24 mandamus shall be granted, and a receiver or a conservator may be  
25 appointed for the defendant or the defendant's assets. The court  
26 may not require the commissioner to post a bond in an action  
27 brought under this title.

1           SECTION 207.02. PREVENTING ILLEGAL USE OF NAME. (a) If the  
2 commissioner finds that a person has violated or is about to  
3 violate Section 203.06 of this title, the commissioner may order  
4 the person to cease and desist from the violation.

5           (b) Within 30 days after the date an order is issued under  
6 Subsection (a) of this section, the person to whom the order is  
7 directed may file with the commissioner an application for a  
8 hearing on the order. If the commissioner does not begin a hearing  
9 within 15 business days after the date that application is filed or  
10 within a longer period to which the person consents, the order is  
11 considered rescinded. Following the hearing, the commissioner  
12 shall affirm, modify, or rescind the order. The right of a person  
13 to whom an order is issued under Subsection (a) of this section to  
14 petition for judicial review of the order is not affected by the  
15 failure of the person to apply to the commissioner for a hearing on  
16 the order issued under this subsection.

17           SECTION 207.03. PREVENTING VIOLATION OR UNSAFE OR UNSOUND  
18 ACT. (a) If, after notice and a hearing, the commissioner  
19 determines that a licensee or a subject person of a licensee has  
20 violated, is violating, or is about to violate this title or  
21 another applicable law, or that a licensee or subject person of a  
22 licensee has engaged or participated in, is engaging or  
23 participating in, or is about to engage or participate in an unsafe  
24 or unsound act with respect to the business of that licensee, the  
25 commissioner may order that licensee or subject person to cease and  
26 desist from the action or violation. The order may require the  
27 licensee or subject person to take affirmative action to correct

1 any condition resulting from the action or violation.

2 (b) The commissioner may order the licensee or subject  
3 person to cease and desist from an action or violation under  
4 Subsection (a) if the commissioner determines that the action or  
5 violation is likely to cause the insolvency of or substantial  
6 dissipation of the assets or earnings of the licensee, to seriously  
7 weaken the condition of the licensee, or to otherwise seriously  
8 prejudice the interests of the licensee before the completion of  
9 proceedings conducted under Subsection (a) of this section. The  
10 order may require the licensee or subject person to take  
11 affirmative action to correct any condition resulting from the  
12 action or violation.

13 (c) Within 30 days after the date an order is issued under  
14 Subsection (b) of this section, the licensee or subject person of a  
15 licensee to whom the order is directed may file with the  
16 commissioner an application for a hearing on the order. If the  
17 commissioner does not begin a hearing within 15 business days after  
18 the date the application is filed or within a longer period to  
19 which the licensee or subject person consents, the order is  
20 considered rescinded. After the hearing, the commissioner shall  
21 affirm, modify, or rescind the order. The right of a licensee or  
22 subject person to whom an order is issued under Subsection (b) to  
23 petition for judicial review of the order is not affected by the  
24 failure of the licensee or subject person to apply to the  
25 commissioner for a hearing on the order issued under this  
26 subsection.

27 SECTION 207.04. REMOVAL OF OFFICER. (a) The commissioner

1 may issue an order removing a subject person of a licensee from the  
2 person's office, if any, with the licensee and prohibiting the  
3 subject person from participating in the conduct of the business of  
4 the licensee, if, after notice and a hearing, the commissioner  
5 determines that:

6 (1) the subject person has violated this title or  
7 another applicable law, has engaged or participated in an unsafe or  
8 unsound act with respect to the business of the licensee, or has  
9 engaged or participated in an act that constitutes a breach of the  
10 subject person's fiduciary duty;

11 (2) the act, violation, or breach of fiduciary duty  
12 has caused or is likely to cause substantial financial loss or  
13 other damage to the licensee or has seriously prejudiced or is  
14 likely to seriously prejudice the interests of the licensee, or the  
15 subject person has received financial gain by reason of the act,  
16 violation, or breach of fiduciary duty; and

17 (3) the act, violation, or breach of fiduciary duty  
18 either involves dishonesty on the part of the subject person or  
19 demonstrates the subject person's gross negligence with respect to  
20 the business of the licensee or a wilful disregard for the safety  
21 and soundness of the licensee.

22 (b) The commissioner may issue an order removing the subject  
23 person from the subject person's office with the licensee, if any,  
24 and prohibiting the subject person from further participating in  
25 the conduct of the business of the licensee, except with the prior  
26 consent of the commissioner, if, after notice and a hearing, the  
27 commissioner determines that, by engaging or participating in an

1 act with respect to a financial or other business institution that  
2 resulted in substantial financial loss or other damage, the subject  
3 person of a licensee has demonstrated:

4 (1) dishonesty or wilful or continuing disregard for  
5 the safety and soundness of the financial or other business  
6 institution; and

7 (2) unfitness to continue as a subject person of the  
8 licensee or to participate in conducting the business of the  
9 licensee.

10 (c) If the commissioner determines that the factors set  
11 forth in Subsection (a) or (b) of this section are true with  
12 respect to a subject person of a licensee, and that it is necessary  
13 for the protection of the interests of the licensee or for the  
14 protection of the public interest, the commissioner may issue an  
15 order suspending the subject person from the subject person's  
16 office, if any, with the licensee and prohibiting the subject  
17 person from further participating in conducting the business of the  
18 licensee, except with the consent of the commissioner.

19 (d) Within 30 days after the date an order is issued under  
20 Subsection (c) of this section, the subject person of a licensee to  
21 whom the order is directed may file with the commissioner an  
22 application for a hearing on the order. If the commissioner does  
23 not begin a hearing within 15 business days after the date the  
24 application is filed or within a longer period to which the subject  
25 person consents, the order is considered rescinded. After the  
26 hearing, the commissioner shall affirm, modify, or rescind the  
27 order. The right of a subject person of a licensee to whom an

1 order is issued under Subsection (c) of this section to petition  
2 for judicial review of the order is not affected by the failure of  
3 the subject person to apply to the commissioner for a hearing on  
4 the order under this subsection.

5 (e) A person to whom an order is issued under this section  
6 may apply to the commissioner to modify or rescind the order. The  
7 commissioner shall not modify or rescind the order unless the  
8 commissioner determines that it is in the public interest to do so  
9 and that it is reasonable to believe that if the person becomes a  
10 subject person of a licensee, the person will comply with this Act.

11 (f) As used in this section, "office" means the position of  
12 director, officer, or employee of the licensee or of a subsidiary  
13 of the licensee.

14 SECTION 207.05. REMOVAL ON INDICTMENT OR CONVICTION.

15 (a) If the commissioner determines that a subject person of a  
16 licensee has been indicted by a grand jury or has been bound over  
17 for trial by a court for a crime involving dishonesty or breach of  
18 trust, and that the fact that the person continues to be a subject  
19 person of the licensee may threaten the interests of the licensee  
20 or may threaten to impair public confidence in the licensee, the  
21 commissioner may issue an order suspending the subject person from  
22 the person's office, if any, with the licensee and prohibiting the  
23 subject person from further participating in any manner in the  
24 conduct of the business of the licensee, except with the consent of  
25 the commissioner.

26 (b) If the commissioner determines that a subject person or  
27 former subject person of a licensee has been convicted of a crime



1 that is punishable by imprisonment for a term of not less than one  
2 year and that involves dishonesty or breach of trust, and that the  
3 fact that the person continues to be or will resume to be a subject  
4 person of the licensee may threaten the interests of the licensee  
5 or may threaten to impair public confidence in the licensee, the  
6 commissioner may issue an order suspending or removing the subject  
7 person or former subject person from the subject person's office,  
8 if any, with the licensee and prohibiting the subject person from  
9 further participating in the conduct of the business of the  
10 licensee, except with the prior consent of the commissioner.

11 (c) Within 30 days after the date an order is issued under  
12 Subsection (a) or (b) of this section, the subject person of a  
13 licensee to whom the order is directed may file with the  
14 commissioner an application for a hearing on the order. If the  
15 commissioner does not begin a hearing within 15 business days after  
16 the date application is filed or within a longer period to which  
17 the subject person consents, the order is considered rescinded.  
18 Following the hearing, the commissioner shall affirm, modify, or  
19 rescind the order. The right of a subject person or former subject  
20 person of a licensee to whom an order is issued under Subsection  
21 (a) or (b) of this section to petition for judicial review of the  
22 order is not affected by the failure of the person to apply to the  
23 commissioner for a hearing on the order under this subsection.

24 (d) The fact that a subject person of a licensee charged  
25 with a crime involving dishonesty or breach of trust is not  
26 convicted of the crime does not prohibit the commissioner from  
27 issuing an order to the subject person under any other provision of

1     this title.

2           (e) A person to whom an order is issued under this section  
3 may apply to the commissioner to modify or rescind the order. The  
4 commissioner may not modify or rescind the order unless the  
5 commissioner determines that it is in the public interest to do so  
6 and that it is reasonable to believe that if the person becomes a  
7 subject person of a licensee, the person will comply with this  
8 title.

9           (f) As used in this section, "office" means the position of  
10 director, officer, or employee of the licensee or of a subsidiary  
11 of the licensee.

12           SECTION 207.06. DISCLOSURE TO SHAREHOLDERS. If the  
13 commissioner determines that disclosure to shareholders regarding a  
14 matter is warranted, the commissioner may require a licensee, in a  
15 form and manner the commissioner specifies, to disclose to the  
16 shareholders of a licensee the results of a communication or order  
17 from the commissioner addressed to the licensee or to a subject  
18 person of the licensee.

19           SECTION 207.07. MEETING OF BOARD OF DIRECTORS. (a) The  
20 commissioner may call a meeting of the board of directors of a  
21 licensee by giving to each director not less than five days before  
22 the date of the meeting notice of the time, place, and purpose of  
23 the meeting. Notice must be by personal service or by registered  
24 or certified mail to the director's last known address as shown in  
25 the records of the commissioner.

26           (b) The commissioner may call a meeting of the shareholders  
27 of a licensee by giving to each shareholder not less than five days

1 before the date of the meeting notice of the time, place, and  
2 purpose of the meeting. Notice must be by personal service or by  
3 registered or certified mail to the shareholder's last known  
4 address as shown in the records of the licensee. The licensee  
5 shall pay the expenses of the notice and of a meeting called under  
6 this subsection.

7 SECTION 207.08. ORDER TO CEASE FINANCING. (a) The  
8 commissioner may issue an order directing a licensee to refrain  
9 from providing additional financing assistance to business firms if  
10 the commissioner determines that the order is necessary to protect  
11 the interests of the licensee or the public interest, and if, after  
12 notice and a hearing, the commissioner determines that:

13 (1) the licensee or a controlling person, subsidiary,  
14 or affiliate of the licensee has violated this title or another  
15 applicable law;

16 (2) the licensee is conducting its business in an  
17 unsafe and unsound manner;

18 (3) the licensee is in a condition that makes it  
19 unsafe or unsound for the licensee to transact business;

20 (4) the licensee has ceased to transact business as a  
21 business and industrial development corporation;

22 (5) the licensee is insolvent;

23 (6) the licensee has suspended payment of its  
24 obligations, has made an assignment for the benefit of its  
25 creditors, or has admitted in writing its inability to pay its  
26 debts as they become due;

27 (7) the licensee has applied for an adjudication of

1 bankruptcy, reorganization, arrangement, or other similar relief,  
2 or a person has applied for that relief against a licensee and the  
3 licensee has by affirmative act approved of or consented to the  
4 action, or that relief has been granted; or

5 (8) a fact or condition exists that would have been  
6 grounds for denying the application if the fact or condition had  
7 existed at the time the licensee applied for its license.

8 (b) If the commissioner determines that any of the factors  
9 set forth in Subsection (a) of this section are true with respect  
10 to a licensee and that it is necessary for the protection of the  
11 interests of the licensee or the public interest that the  
12 commissioner immediately issue an order directing the licensee to  
13 refrain from providing any additional financing assistance to  
14 business firms, the commissioner may issue the order without a  
15 hearing. Within 30 days after the date an order is issued under  
16 this subsection, the licensee to whom the order is directed may  
17 file with the commissioner a request for a hearing on the order.  
18 If the commissioner does not begin a hearing within 15 business  
19 days after the date the request is filed or within a longer period  
20 to which the licensee consents, that order is considered rescinded.  
21 After the hearing, the commissioner shall affirm, modify, or  
22 rescind the order.

23 (c) With the consent of the commissioner, a licensee that  
24 has been the subject of an order under Subsection (a) or (b) of  
25 this section may resume providing financing assistance to business  
26 firms under conditions that the commissioner prescribes.

27 (d) A person to whom an order is issued under Subsection (a)

1 or (b) of this section may apply to the commissioner to modify or  
2 rescind the order. The commissioner may not grant the application  
3 unless the commissioner determines that it is in the public  
4 interest to do so and that it is reasonable to believe that if the  
5 order is modified or rescinded the person will comply with this  
6 title.

7 SECTION 207.09. CONSERVATORSHIP. (a) If the commissioner  
8 finds that any of the factors set forth in Section 207.08(a) of  
9 this title are true with respect to a licensee and that it is  
10 necessary for the protection of the interests of the licensee or  
11 for the protection of the public interest that the commissioner  
12 take immediate possession of the property and business of the  
13 licensee, the commissioner may appoint a conservator for the  
14 licensee. On the approval of the commissioner, the expenses of the  
15 conservatorship shall be paid out of the assets of the licensee.  
16 The expenses shall be a first charge on the assets and shall be  
17 fully paid before any final distribution is made.

18 (b) Under the direction of the commissioner, the conservator  
19 shall take possession of the books, records, and assets of the  
20 licensee and shall take action necessary to conserve the assets of  
21 the licensee or ensure payment of obligations of the licensee  
22 pending further disposition of its business as provided by law. At  
23 any appropriate time, the commissioner may terminate the  
24 conservatorship and permit the licensee to resume the transaction  
25 of its business subject to the terms, conditions, restrictions, and  
26 limitations the commissioner prescribes.

27 (c) If the commissioner determines that it is appropriate

1 that the licensee be liquidated, the attorney general on request of  
2 the commissioner shall apply to the district court of the county in  
3 which the principal office of the licensee is located for the  
4 appointment of a receiver for the licensee, if the commissioner  
5 determines that:

6 (1) the licensee is insolvent;

7 (2) the licensee has suspended payment of its  
8 obligations, has made an assignment for the benefit of its  
9 creditors, or has admitted in writing its inability to pay its  
10 debts as they become due;

11 (3) the licensee has applied for an adjudication of  
12 bankruptcy, reorganization, arrangement, or other similar relief;

13 (4) a person has applied for the relief described  
14 under Subdivision (3) of this subsection against a licensee and  
15 that licensee has by an affirmative act approved of or consented to  
16 the action or the relief has been granted; or

17 (5) the licensee is in a condition that makes it  
18 unsafe or unsound for the licensee to transact business.

19 SECTION 207.10. CIVIL PENALTY. (a) If, after notice and a  
20 hearing, the commissioner finds that a person has violated this  
21 title, the commissioner may order that person to pay to the  
22 commissioner a civil penalty in the amount the commissioner  
23 specifies based on the severity of the violation. However, the  
24 amount of the civil penalty may not exceed \$1,000 for each  
25 violation, or in the case of a continuing violation, \$1,000 for  
26 each day for which the violation continues. Money collected for a  
27 civil penalty under this section shall be paid into the state

1 treasury to the credit of the general revenue fund.

2 (b) This section does not apply to any act committed or  
3 omitted in good faith in conformity with an order, rule,  
4 declaratory ruling, or written interpretative opinion of the  
5 commissioner in effect at the time of the act or omission,  
6 regardless of whether the order, rule, declaratory ruling, or  
7 written interpretative opinion is later amended, rescinded, or  
8 repealed, or determined by judicial or other authority to be  
9 invalid.

10 (c) Subsection (a) of this section is in addition to other  
11 provisions of this title that authorize the commissioner to issue  
12 orders or to take other action because of a violation of this  
13 title. A person who is convicted under Section 208.10 of this  
14 title because of a violation of Chapter 208 of this title is not  
15 liable to pay a civil penalty under Subsection (a) on account of  
16 that violation. A person who pays a civil penalty under Subsection  
17 (a) because of a violation of Chapter 208 is not liable to  
18 prosecution under Section 208.10 because of that violation.

19 CHAPTER 208. CERTAIN UNLAWFUL ACTIVITIES

20 SECTION 208.01. DEFINITIONS. (a) In this article:

21 (1) "Advisor" means a person who regularly provides  
22 legal, accounting, or management services or advice to a licensee.

23 (2) "Associate" means:

24 (A) a controlling person, director, officer,  
25 agent, or advisor of a licensee;

26 (B) a director, officer, or partner of a person  
27 referred to in Paragraph (A) of this subdivision;

1 (C) a person who controls, is controlled by, or  
2 is under common control with a person referred to in Paragraph (A)  
3 of this subdivision;

4 (D) a close relative of a person referred to in  
5 Paragraph (A) of this subdivision;

6 (E) a corporation of which a person referred to  
7 in Paragraphs (A)-(D) of this subdivision is a director or officer;  
8 or

9 (F) a business firm in which a person referred  
10 to in Paragraphs (A)-(D) of this subdivision, or any combination of  
11 those persons acting in concert, owns or controls, directly or  
12 indirectly, a 20 percent or greater equity interest.

13 (3) "Close relative" means parent, child, sibling,  
14 spouse, father-in-law, mother-in-law, son-in-law, brother-in-law,  
15 daughter-in-law, or sister-in-law.

16 (4) "Closing services" means services performed in  
17 connection with providing financing assistance. The term includes  
18 appraising property and preparing credit reports. The term does  
19 not include a service performed after the providing of financing  
20 assistance.

21 (5) "Short-term financing assistance" means financing  
22 assistance with a term of not more than five years.

23 (b) For the purposes of Subsection (a)(2) of this section:

24 (1) a person who is in a relationship referred to in  
25 that subdivision within six months before or after the date a  
26 licensee provides financing assistance is considered to be in that  
27 relationship on the date that licensee provides that financing



1 assistance; and

2 (2) if a licensee, to protect its interests,  
3 designates a person to serve as a director or officer of, or in any  
4 capacity in the management of, a business firm to which that  
5 licensee provides financing assistance, that person may not,  
6 because of that designation, be considered to have a relationship  
7 with that business firm, except that this subdivision does not  
8 apply if the person has any other financial interest in the  
9 business firm or if the person, at any time before the licensee  
10 provides the financing assistance, served as a director or officer  
11 of, or in any other capacity in the management of, the business  
12 firm for a period of 30 days or more.

13 SECTION 208.02. FALSE STATEMENT; OMISSION. A person may not  
14 intentionally make an untrue statement of a material fact in an  
15 application or report filed with the commissioner under this title,  
16 or intentionally omit to state in the application or report a  
17 material fact required to be stated in the application or report.

18 SECTION 208.03. REFUSAL TO OPEN BOOKS. A person having  
19 custody of any of the books, accounts, or other records of a  
20 licensee may not intentionally refuse to allow the commissioner, on  
21 request, to inspect or make copies of any of those books, accounts,  
22 or other records.

23 SECTION 208.04. FALSE ENTRY; ALTERATION; CONCEALMENT;  
24 DESTRUCTION. A person may not, with intent to deceive the  
25 commissioner, a governmental agency, or a director, officer,  
26 employee, auditor, or attorney of a licensee:

27 (1) make a false entry in the books, accounts, or

1 other records of that licensee;

2 (2) omit to make an entry in those books, accounts, or  
3 other records which that person is required to make; or

4 (3) alter, conceal, or destroy any of those books,  
5 accounts, or other records.

6 SECTION 208.05. FINANCING TO ASSOCIATE. A licensee may not  
7 provide financing assistance to an associate of the licensee.

8 SECTION 208.06. DISCHARGING OF INTEREST OF ASSOCIATE. A  
9 licensee may not provide, directly or indirectly, financing  
10 assistance to discharge, or to free other money for use in  
11 discharging, in whole or in part, an obligation to an associate of  
12 that licensee. This section does not apply to a transaction by an  
13 associate of a licensee in the normal course of that associate's  
14 business involving a line of credit or short-term financing  
15 assistance.

16 SECTION 208.07. FINANCING ASSISTANCE TO CERTAIN BUSINESS  
17 FIRMS. (a) A licensee may not provide, directly or indirectly,  
18 financing assistance to a business firm to which an associate of  
19 that licensee provides financing assistance, either  
20 contemporaneously with, or within one year before or after,  
21 providing financing assistance by the licensee, if the terms on  
22 which the licensee provides financing assistance are less favorable  
23 to the licensee than the terms on which the associate provides  
24 financing assistance to the business firm. If the financing  
25 assistance provided by the associate of the licensee is a different  
26 kind than the financing assistance provided by the licensee, the  
27 burden is on the licensee to prove that the terms on which the

1 licensee provided financing assistance were at least as favorable  
2 to the licensee as the terms on which the associate provided  
3 financing assistance to the business firm.

4 (b) This section does not apply if:

5 (1) the associate is a controlling person of the  
6 licensee and is also the only shareholder of the licensee;

7 (2) the associate is a subsidiary of the licensee; or

8 (3) a transaction by an associate of a licensee is in  
9 the normal course of that associate's business involving a line of  
10 credit or short-term financing assistance.

11 SECTION 208.08. PROHIBITED COMPENSATION. An associate of a  
12 licensee may not receive, directly or indirectly, from a person to  
13 whom that licensee provides financing assistance, compensation in  
14 connection with providing that financing assistance or anything of  
15 value for procuring, influencing, or attempting to procure or  
16 influence the licensee's action with respect to the providing of  
17 the financing assistance. This section does not apply to the  
18 receipt of fees by an associate of a licensee for bona fide closing  
19 services performed by that associate if:

20 (1) the associate, with the consent and knowledge of  
21 the person to whom the financing assistance is provided, is  
22 designated by the licensee to perform the services;

23 (2) the services are appropriate and necessary in the  
24 circumstances;

25 (3) the fees for the services are approved as  
26 reasonable by the licensee; or

27 (4) the fees for the services are collected by the

1 licensee on behalf of the associate.

2 SECTION 208.09. EXEMPTION. (a) By order or rule the  
3 commissioner may exempt from Sections 208.05-208.08 of this title,  
4 either unconditionally or on specified terms and conditions and for  
5 specified periods, a person or transaction or class of persons or  
6 transactions, if the commissioner finds that the exemption is in  
7 the public interest and that the regulation of the person,  
8 transaction, or class is not necessary for the purposes of this  
9 title.

10 (b) In granting an exemption the commissioner shall give  
11 consideration to conflict of interest provisions of federal law  
12 that may be applicable to that person or transaction governing  
13 participants in federal financing programs.

14 SECTION 208.10. CRIMINAL PENALTY. (a) A person who  
15 knowingly violates this chapter commits an offense. An offense  
16 under this section is a felony of the third degree.

17 (b) This section does not apply to an act committed or  
18 omitted in good faith in conformity with an order, rule,  
19 declaratory ruling, or written interpretative opinion of the  
20 commissioner in effect when the act or omission occurred,  
21 regardless of whether the order, rule, declaratory ruling, or  
22 written interpretative opinion is later amended, rescinded,  
23 repealed, or determined by judicial or other authority to be  
24 invalid for any reason.

25 (c) This title does not limit the power of the state to  
26 punish a person for an act that constitutes a crime under any  
27 statute.

1 TITLE III. EMERGENCY

2 SECTION 301.01. EMERGENCY. The importance of this  
3 legislation and the crowded condition of the calendars in both  
4 houses create an emergency and an imperative public necessity that  
5 the constitutional rule requiring bills to be read on three several  
6 days in each house be suspended, and this rule is hereby suspended,  
7 and that this title take effect and be in force from and after its  
8 passage, and it is so enacted.

# HOUSE COMMITTEE REPORT

1st Printing

89MAY 16 PM 8:42  
HOUSE OF REPRESENTATIVES

By Rodriguez

H.B. No. 263

Substitute the following for H.B. No. 263:

By Gavin

C.S.H.B. No. 263

## A BILL TO BE ENTITLED

### AN ACT

relating to the creation of the Texas strategic fund, the Texas strategic fund advisory committee, and the economic development of the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 481.007, Government Code, as added by S.B. 223, Acts of the 71st Legislature, Regular Session, 1989, is amended by adding Subsection (c) to read as follows:

(c) The Texas Strategic Fund Advisory Committee consists of five members appointed by the board. One member must represent higher education, two members must represent financial institutions, and two members must have the academic or professional credentials to assist in determining the selection of projects to be funded under Subchapters D and E. The committee shall make funding recommendations to the department regarding any finance programs established under Subchapters D and E.

SECTION 2. Section 481.053, Government Code, as added by S.B. 223, Acts of the 71st Legislature, Regular Session, 1989, is amended by adding Subsection (d) to read as follows:

(d) An appropriation made by the legislature may be used by the department to pay for the costs associated with issuing bonds, including legal fees, underwriting fees, letter of credit fees, rating agency fees, and issuer fees.

SECTION 3. Section 481.056(b), Government Code, as added by

1 S.B. 223, Acts of the 71st Legislature, Regular Session, 1989, is  
2 amended to read as follows:

3 (b) The department shall establish and maintain a separate  
4 fund into which the proceeds from the sale of the bonds shall be  
5 deposited. All other money received by the department under this  
6 subchapter, except money required to be deposited in the Texas  
7 strategic fund, shall also be deposited in this fund. The board  
8 may provide for the establishment and maintenance of separate  
9 accounts within the fund, including interest and sinking accounts,  
10 reserve accounts, program accounts, and other accounts, all of  
11 which shall be kept and held in escrow and in trust by the state  
12 treasurer for and on behalf of the department and the owners of the  
13 bonds as funds outside the treasury under Section 404.073 and may  
14 be used only as provided by this subchapter. Pending use, the  
15 state treasurer may invest and reinvest the money in the fund in  
16 investments authorized by law for state funds that the state  
17 treasurer, with the approval of the board and consistent with its  
18 resolutions authorizing the bonds, considers appropriate. Earnings  
19 on those investments shall be deposited in the fund. The  
20 department is authorized to use money deposited in the fund for the  
21 purposes specified in and according to the procedures established  
22 by this subchapter, and the state may not take any action with  
23 respect to the fund other than as specified by this subchapter and  
24 in the resolutions of the board.

25 SECTION 4. Section 481.072, Government Code, as added by  
26 S.B. 223, Acts of the 71st Legislature, Regular Session, 1989, is  
27 amended to read as follows:

1           Sec. 481.072. DEFINITIONS. In this subchapter:

2                   (1) "Advisory committee" means the Texas Strategic  
3 Fund Advisory Committee.

4                   (2) "Cost" has the meaning assigned that term by the  
5 Development Corporation Act.

6                   (3) [~~2~~] "Development Corporation Act" means the  
7 Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas  
8 Civil Statutes).

9                   (4) "Disadvantaged business" means a business  
10 enterprise that is at least 51 percent owned or controlled by one  
11 or more socially and economically disadvantaged persons who are  
12 socially disadvantaged because of their identification as members  
13 of certain groups, such as women, black Americans, Hispanic  
14 Americans, Asian Pacific Americans, American Indians, and Mexican  
15 Americans.

16                   (5) "Fund" means the Texas strategic fund.

17                   (6) [~~3~~] "Project" means the land, buildings,  
18 equipment, facilities, and one or more improvements found by the  
19 department to be required or suitable for the promotion of  
20 development and expansion of manufacturing, industrial, and  
21 commercial facilities; transportation facilities, including  
22 airports, ports, mass commuting facilities, and parking facilities;  
23 sewage or solid waste disposal facilities; air or water pollution  
24 control facilities; facilities for the furnishing of water to the  
25 general public; distribution centers; small warehouse facilities  
26 capable of serving as decentralized storage and distribution  
27 centers; research parks; research and development laboratories;



1 railroad facilities, including trackage, right-of-way, and  
 2 appurtenances; theme or recreational parks; agricultural  
 3 harvesting, storage, transportation, or processing facilities;  
 4 grain elevators; dam or irrigation facilities; and facilities that  
 5 are related to any of those facilities, and in the furtherance of  
 6 the public purposes of this subchapter, all as defined by the rules  
 7 of the department, regardless of whether in existence or required  
 8 to be identified, acquired, or constructed later [~~has-the-meaning~~  
 9 ~~assigned-that-term-by-the-Development-Corporation-Act~~].

10 (7) "Small business" has the meaning assigned by  
 11 Section 481.101.

12 (8) [4] "User" includes any person.

13 SECTION 5. Section 481.073, Government Code, as added by  
 14 S.B. 223, Acts of the 71st Legislature, Regular Session, 1989, is  
 15 amended by adding Subsection (d) to read as follows:

16 (d) The department may:

17 (1) make loans to or acquire loans made to users;

18 (2) make loans to or acquire loans made to lenders to  
 19 enable the lenders to make loans to users;

20 (3) guarantee, in whole or in part, loans to users;

21 and

22 (4) insure, coinsure, and reinsure, in whole or in  
 23 part, loans to users.

24 SECTION 6. Subchapter E, Chapter 481, Government Code, as  
 25 added by S.B. 223, Acts of the 71st Legislature, Regular Session,  
 26 1989, is amended by adding Section 481.076 to read as follows:

27 Sec. 481.076. TEXAS STRATEGIC FUND. (a) A special account

1 in the state treasury to be known as the Texas strategic fund is  
2 created. Any appropriation or transfer made by the legislature to  
3 the fund, principal and interest payments on loans made from the  
4 fund, investment earnings on money in the fund and fees related to  
5 operation of and use of money in the fund shall be deposited in the  
6 fund. Money in the fund may be used only to carry out the purposes  
7 of this section. The fund shall operate as a revolving fund.

8 (b) The department may provide loans to users, including  
9 disadvantaged businesses and small businesses, to finance costs  
10 associated with the start-up or expansion of a Texas business.

11 (c) In providing loans under this section, the department  
12 may give preference to those businesses creating or retaining the  
13 most jobs.

14 SECTION 7. The importance of this legislation and the  
15 crowded condition of the calendars in both houses create an  
16 emergency and an imperative public necessity that the  
17 constitutional rule requiring bills to be read on three several  
18 days in each house be suspended, and this rule is hereby suspended,  
19 and that this Act take effect and be in force from and after its  
20 passage, and it is so enacted.

COMMITTEE REPORT

The Honorable Gib Lewis  
 Speaker of the House of Representatives

5-10-89  
 (date)

Sir:

We, your COMMITTEE ON BUSINESS AND COMMERCE,

to whom was referred HB263 have had the same under consideration and beg to report  
 (measure)  
 back with the recommendation that it

- ☐ do pass, without amendment.
- ☐ do pass, with amendment(s).
- ☒ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. ☒ yes ☐ no
 An actuarial analysis was requested. ☐ yes ☒ no

An author's fiscal statement was requested. ☐ yes ☒ no

A criminal justice policy impact statement was prepared. ☐ yes ☒ no

A water development policy impact statement was requested. ☐ yes ☒ no

☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars for placement on the ☐ Local, ☐ Consent, or ☐ Resolutions Calendar.

This measure ☐ proposes new law. ☒ amends existing law.

House Sponsor of Senate Measure \_\_\_\_\_

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wolens, Ch.	X			
Dutton, V.C.	X			
Connelly, C.B.O.	X			
Fraser	X			
Gavin	X			
Hill, A.	X			
Hilbert	X			
Horn				X
Smithee	X			

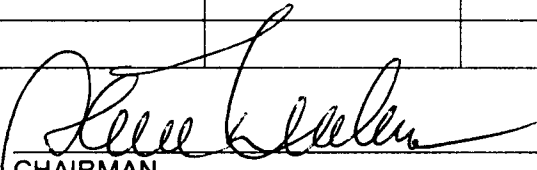
Total
 

8
 aye

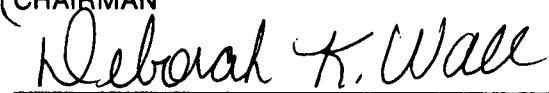
0
 nay

0
 present, not voting

1
 absent



CHAIRMAN



COMMITTEE COORDINATOR

H.B. 263  
By: Rodriguez  
C.S.H.B. 263  
By: Gavin

Committee on Business and Commerce

BILL ANALYSIS

BACKGROUND INFORMATION

Current law allows the legislature to provide for the creation of programs and the making of loans and grants of public money for public purposes to assist in the development and diversification of the economy of this state. A need exists for capital for economic development projects as well as in creating new jobs in this state.

PURPOSE

C.S.H.B. 263 creates the Texas Strategic Fund and the Texas Strategic Fund Advisory Committee under the Texas Department of Commerce to assist in economic development within this state.

RULEMAKING AUTHORITY

It is the opinion of the committee that this bill does not delegate any additional rulemaking authority to any state officer, agency, department or institution.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 481.007 of the Government Code to create the Texas Strategic Fund Advisory Committee under the Texas Department of Commerce to assist in determining the selection of projects and finance programs.

SECTION 2. Amends Section 481.053 of the Government Code to allow an appropriation of the legislature to be used by the Texas Department of Commerce to pay the costs associated with issuing bonds, including legal fees, underwriting fees, letter of credit fees, rating agency fees and issuer fees.

SECTION 3. Amends Section 481.056(b) of the Government Code to except proceeds from the sales of bonds for the Texas Strategic Fund from being deposited in the separate fund created under this section of the Government Code.

SECTION 4. Amends Section 481.072 of the Government Code by adding definitions for advisory committee, disadvantaged business, fund and small business. The definition for project is amended by this section.

SECTION 5. Amends Section 481.073 of the Government Code by adding new Subsection (d) which allows the Department of Commerce to make loans or acquire loans made to users, make loans or acquire loans made to lenders to enable lenders to make loans to users, guarantee loans to users and insure, coinsure, and reinsure loans to users.

SECTION 6. Amends Subchapter E, Chapter 481 of the Government Code by adding Sec. 481.076 which defines the Texas Strategic Fund and creates it as a special fund in the Treasury. The fund may be used for loans to users, including disadvantaged businesses and small businesses to finance start-up costs or expansion costs. A preference is to be given to those businesses creating or retaining the most jobs.

SECTION 7. Contains an emergency clause and makes the Act effective on passage.

#### SUMMARY OF COMMITTEE ACTION

Public notice was posted in accordance with Rule 4, Section 12, Rules and Procedures of the House of Representatives for a public hearing to be held on May 8, 1989. The bill and the committee substitute were laid out in a public hearing on May 8, 1989. Testifying for the bill was Todd Taylor, representing himself. Testifying on the bill was Katie Schultz, representing the Texas Department of Commerce. The bill was left pending in committee. The bill and committee substitute were laid out in a formal meeting of the committee on May 10, 1989. A motion was made and passed without objection to adopt the committee substitute. A motion was made to report the bill, as substituted, to the House with a recommendation that it do pass. The motion prevailed by a vote of 8 ayes, 0 nays, 0 present not voting, and 1 absent.

#### COMPARISON OF THE ORIGINAL BILL TO THE SUBSTITUTE

C.S.H.B. 263 differed from the original bill in that the original bill created the Texas Strategic Fund as a separate body politic. C.S.H.B. 263 makes the Texas Strategic Fund a separate fund under the Department of Commerce. C.S.H.B. 263 greatly changed the administration of the fund from the original bill. The structure under C.S.H.B. 263 is much more simplified than under the original bill.

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

May 15, 1989

TO: Honorable Steven D. Wolens, Chair  
Committee on Business and Commerce  
House of Representatives  
Austin, Texas

In Re: Committee Substitute for  
House Bill No. 263

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for House Bill No. 263 (relating to creation of the Texas strategic fund, the Texas strategic fund advisory committee, and the economic development of the state) this office has determined the following:

The fiscal implication of the bill to the State or units of local government cannot be determined.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: Department of Commerce;  
LBB Staff: JO, JWH, AL, PVT, LV

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

May 7, 1989

TO: Honorable Steven D. Wolens, Chair  
Committee on Business and Commerce  
House of Representatives  
Austin, Texas

In Re: House Bill No. 263  
By: Rodriquez

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 263 (relating to creation of the Texas strategic fund, business and industrial development corporations, and the economic development of the state) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would create a public entity, the Texas Strategic Fund, which would be managed by a nine-member board of directors consisting of the Chairman of the Department of Commerce, the State Treasurer, and seven members appointed by the Governor. The Department of Commerce would be required to direct and supervise the budgeting, procurement, and related functions of the fund, and the administrative responsibilities for employees of the fund. In addition, the bill would create the economic development fund in the State Treasury.

In addition to issuing bonds, the Texas Strategic Fund would be authorized to make grants and loans, guarantee and insure loans, issue letter of credit, acquire and sell real property, construct, lease or equip a project, make investments, create security interests in a project, and buy and sell loans.

The Department of Commerce would be required to monitor the operations of an entity operated or financed by the fund and would be authorized to require audits. The bill would establish; the Center for Assistance to Private Enterprise; the Center for Assistance to Local Government; the Center for Loan Insurance, the Center for Minority Venture Capital, the Center for Research and Development, and the Center for Product Development. The bill would also establish provisions regarding business and industrial development corporations, and would authorize the Department of Banking to administer these provisions. The Department of Banking would be authorized to collect fees.

The fiscal implication of the bill to the State or units of local government cannot be determined.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: Department of Commerce;  
LBB Staff: JO, JWH, AL, PVT, NH

H. B. No. 263

A BILL TO BE ENTITLED

AN ACT

relating to creation of the Texas strategic fund, business and industrial development corporations, and the economic development of the state; providing civil and criminal penalties.

By

Cust Rodriguez

DEC 28 1988

JAN 30 1989

MAY 10 1989

MAY 16 1989

MAY 17 1989

1. Filed with the Chief Clerk.

2. Read first time and Referred to Committee on

Business & Commerce

3. Reported favorably ~~(as amended)~~ (as substituted) and sent to Printer at 5:15pm

4. Printed and distributed at 8:42pm

MAY 15 1989

5. Sent to Committee on Calendars at 9:25am

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of        yeas,        nays,        present, not voting).

7. Motion to reconsider and table the vote by which H.B.        was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of        yeas,        nays, and        present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of        yeas,        nays, and        present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of        yeas,        nays,        present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B.        was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of        yeas,        nays, and        present, not voting).

12. Ordered Engrossed at       

13. Engrossed.

14. Returned to Chief Clerk at       

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on       

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute re first time.

20. Ordered not printed.

21. Regular order of business suspended by

(a viva voce vote.)

(       yeas,        nays.)



\_\_\_\_\_ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_ 23. Read second time \_\_\_\_\_ passed to third reading by:  
(a viva voce vote.)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

\_\_\_\_\_ 24. Caption ordered amended to conform to body of bill.

\_\_\_\_\_ 25. Senate and Constitutional 3-Day Rules suspended by vote of \_\_\_\_\_ yeas,  
\_\_\_\_\_ nays to place bill on third reading and final passage.

\_\_\_\_\_ 26. Read third time and passed by  
(a viva voce vote.)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

OTHER ACTION:

OTHER ACTION:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_ 27. Returned to the House.

\_\_\_\_\_ 28. Received from the Senate (with amendments.)  
(as substituted.)

\_\_\_\_\_ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record  
(Substitute) Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present,  
not voting).

\_\_\_\_\_ 30. Conference Committee Ordered.

\_\_\_\_\_ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record  
Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

\_\_\_\_\_ 32. Ordered Enrolled at \_\_\_\_\_

HOUSE OF REPRESENTATIVES

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